

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
APPENDIX**





75-1328

DOCKET NO. 75-1328

B  
P/S

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT  
Docket No. 75-1328

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UNITED STATES OF AMERICA,  
Appellee,

-v.-

AUSTIN P. WILLIS,  
Defendant-Appellant.

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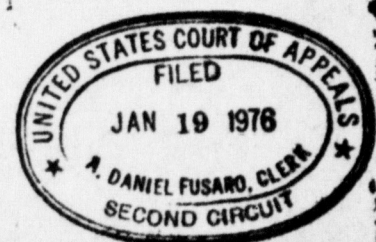
ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK

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APPELLANT'S APPENDIX

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DANIEL H. MURPHY, II,  
Attorney for Defendant-Appellant,  
233 Broadway,  
New York, New York 10007.  
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PAGINATION AS IN ORIGINAL COPY

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## TITLE OF CASE

## ATTORNEYS

THE UNITED STATES

For U. S.:

vs.

James M. Sullivan, Jr.

AUSTIN P. WILLIS

Closed

R.D. # 2

Sherburne, New York 13460

For Defendant:

Jeffrey Merrill as  
 304 First Street  
 Liverpool, N.Y. 13088

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 2 mailed	Clerk				
J.S. 3 mailed	Marshal				
Violation	Docket fee				
Title					
Sec.					
DATE	PROCEEDINGS				
1974					
Aug. 1	Filed Information in Vio. T26, USC, §§3402(f)(2) and 7205, File fraudulent Withholding exemption certificate 3 counts JS2				
Aug. 12	Deft. arraigned and pleads not guilty. Motion to be made returnable 8/26, to be filed on or before 8/16, answer on or before 8/21. Directed to seal financial affidavit received from deft. Right reserved without date as to Constitutional question. Deft. released on own recognizance. Signed bail form.				
Aug. 12	Filed Sealed envelope. Filed Bail reform act form.				
Aug. 14	Filed Copy 5 of CJA Form 20				
Aug 19	Filed Govt's readiness for trial				
Nov. 5	Filed letter dated 11/1/74 from Defense counsel requesting extension of time to Jan, 1975 Session& copy of Judge Foley's letter dated 11/4/74 granting same.				
11/13	Over to January term at Utica, time excluded				
2/18/75	Filed Copy 5 of CJA Form 21				
3/4/75	Over the term. May session at Auburn. Request of defense Counsel, time excluded.				
6/26/75	Jury is drawn and sworn at 11:10 A. M.				
6/27/75	Trial Continued.				

6/27/75 Judge MacMahon charges the Jury at 10:12 A.M. to 10:51 A. M.  
at 1:37 P.M. the Jury comes into court and says they find the deft.  
Not Guilty on ct 1, Not Guilty on ct 2 and Guilty on ct 3. Mr. Merrill  
moves to set aside the jury verdict on grounds stated. Denied. Pre-  
sentence Investigation is Ordered, Deft. is continued on his own recognizance  
Sentencing is set for August 1, 1975 at 11:00 A. M.

7/3/75 Filed Trial Brief of Govt.  
" Filed Memorandum of Law of deft.  
" Filed Government's proposed Instructions  
" Filed Defendant's proposed jury Instructions

8/1/75 The Court advised the defendant of his right to speak in his own behalf  
defendant speaks, his attorney speaks. Defendant is sentenced to one  
year on Count 3. E.S.S. and defendant is placed on probation for one  
year. Defendant is advised of his right to appeal.

8/11/75 Filed Notice of Appeal  
8/12/75 Filed Judgment & Probation signed by Judge Mac Mahon on 8/1/75



UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

V.

AUSTIN P. WILLIS

# 74-~~CR~~-CR 108

I N F O R M A T I O N

26 USC §7205, 3402(f)(2)

COUNT I

THE UNITED STATES ATTORNEY CHARGES:

That on or about the 19th day of March, 1972, AUSTIN P. WILLIS, a resident of Sherburne, New York, in the Northern District of New York, who during the calendar year 1972 was employed by General Laboratory Associates, Inc., Norwich, New York, and who was required under the Internal Revenue laws to furnish General Laboratory Associates, Inc. with a signed withholding exemption certificate relating to the number of withholding exemptions and allowances claimed on or about the date of the commencement of his employment by General Laboratory Associates, Inc. did unlawfully, wilfully and knowingly supply a false and fraudulent statement to General Laboratory Associates, Inc., on which he claimed 10 withholding exemptions and allowances, whereas, as he then and there well knew, he was entitled to claim only 8 withholding exemptions and allowances;

In violation of Title 26, United States Code, Sections 3402(f)(2) and 7205.

COUNT II

THE UNITED STATES ATTORNEY FURTHER CHARGES:

That on or about the 19th day of June, 1972, AUSTIN P. WILLIS, a resident of Sherburne, New York, in the Northern District of New York, who during the calendar year 1972 was employed by General Laboratory Associates, Inc., Norwich, New York, and who was required under the Internal Revenue laws to furnish General Laboratory Associates, Inc. with a signed withholding exemption certificate relating to the number of withholding exemptions and allowances

claimed on or about the date of the commencement of his employment by General Laboratory Associates, Inc. did unlawfully, wilfully and knowingly supply a false and fraudulent statement to General Laboratory Associates, Inc. on which he claimed 15 withholding exemptions and allowances, whereas, as he then and there well knew, he was entitled to claim only 8 withholding exemptions and allowances;

In violation of Title 26, United States Code, Sections 3402(f)(2) and 7205.

COUNT III

THE UNITED STATES ATTORNEY FURTHER CHARGES:

That on or about the 18th day of May, 1973, AUSTIN P. WILLIS, a resident of Sherburne, New York, in the Northern District of New York, who during the calendar year 1973 was employed by General Laboratory Associates, Inc., Norwich, New York, and who was required under the Internal Revenue laws to furnish General Laboratory Associates, Inc. with a signed withholding exemption certificate relating to the number of withholding allowances claimed on or about the date of the commencement of his employment by General Laboratory Associates, Inc. did unlawfully, wilfully and knowingly supply a false and fraudulent statement to General Laboratory Associates, Inc. on which he claimed 21 withholding allowances, whereas, as he then and there well knew, he was entitled to claim only 8 withholding allowances;

In violation of Title 26, United States Code, Sections 3402(f)(2) and 7205.

*James M. Sullivan, Jr.*  
UNITED STATES ATTORNEY







#579

Form **W-4**

(Rev. Dec. 1971)

Department of the Treasury—Internal Revenue Service  
**Employee's Withholding Exemption Certificate**

Type or print full name

445777 P. Willis

Social security number

059-18-7868

Home address (Number and street or rural route)

375444 R.D. #2

City or town, State and ZIP code

11 V 10460

Marital status—check one (if married but legally separated, or spouse is a nonresident alien, check "Single"): ☐ Single ☒ Married

If you expect to owe more tax than will be withheld, you may either claim fewer or zero exemptions or ask for additional withholding on line 8.

- |   |  |    |
|---|--|----|
| 1 | Personal exemption for yourself. Write "1" if claimed . . . . .  | 1  |
| 2 | If married, personal exemption for your wife (or husband) if not separately claimed by her (or him). Write "1" if claimed . . . . .  | 1  |
| 3 | Special withholding allowance. (See instruction 2.) Write "1" if claimed . . . . .   | 1  |
| 4 | Exemptions for age and blindness (applicable only to you and your wife but not to dependents):   |    |
|   | (a) If you or your wife will be 65 years of age or older at the end of the year, and you claim this exemption, write "1"; if both will be 65 or older, and you claim both of these exemptions, write "2" . . . . . |    |
|   | (b) If you or your wife are blind and you claim this exemption, write "1"; if both are blind, and you claim both exemptions, write "2" . . . . .   |    |
| 5 | Exemptions for dependents. (Do not claim an exemption for a dependent unless you are qualified under instruction 5.) . . . . .   | 2  |
| 6 | Additional withholding allowances for itemized deductions. See table on reverse . . . . .  |    |
| 7 | Add the exemptions and allowances (if any) which you have claimed above and enter total . . . . .  | 10 |
| 8 | Additional withholding per pay period under agreement with employer . . . . .  | \$ |

Under the penalties of perjury, I certify that the number of withholding exemptions and allowances claimed on this certificate does not exceed the number to which I am entitled.

(Date)

19

(Signed)

445777 P. Willis A-1

**Table for Determining Number of Withholding Allowances Based on Itemized Deductions (Line 6 of Form W-4)**

If you expect to itemize deductions for the current year, you may be entitled to claim additional withholding allowances (line 6) and thus avoid having too much tax withheld. Your employer will treat each such allowance as a withholding exemption. The amount of itemized deductions for the current year cannot exceed the amount of itemized deductions (or standard deduction) claimed on your return for the preceding year (or 2nd preceding year if you have not yet filed your return for the preceding year), plus additional determinable deductible amounts.

These additional allowances will remain in effect until you file a new W-4 with your employer. For detailed information on allowable itemized deductions, see Form 1040 instructions.

**HOW TO USE THE TABLE**

1. Find the line in the table that includes your estimated salary and wage amount and that shows your status as either a single employee (Part I), a married employee whose spouse is not employed (Part II), or a married employee whose spouse is also employed (Part III). Also, use Part III if you are an employee who is holding more than one job concurrently.

2. Read across that line until you find the column that includes the amount of your estimated itemized deductions.

3. Note the number of allowances shown at the top of the column. This is the maximum number of additional withholding allowances you may claim on line 6.

**Married Couples.**—If you and your wife are both employed and file a joint return, determine your withholding allowances based on your combined wages and deductions. If you file a joint return and your spouse is not employed, use Part II. If you are filing a joint return and both are employed, use Part III to determine the total number of withholding allowances to which you are jointly entitled (you may allocate such withholding allowances between yourselves). However, if in your last filing you filed separate returns, and if you expect to file separately this year, each of you must make your determination on the basis of your own wages and deductions and determine the number of withholding allowances for each from Part III.

Estimated salaries and wages	Number of additional withholding allowances for the amount of itemized deductions shown in the appropriate column (See Line 6 on other side)												
	0	1	2	3	4	5	6*						
	PART I: SINGLE EMPLOYEES												
	Under	At least	But less than	At least	But less than	At least	But less than	At least	But less than	At least	But less than	At least	But less than
Under \$8,000 .....	\$1,700	\$1,700	\$2,450	\$2,450	\$3,200	\$3,200	\$3,950	\$3,950	\$4,700	\$4,700	\$5,450	\$5,450	\$6,200
8,000-10,000 .....	1,800	1,800	2,550	2,550	3,300	3,300	4,050	4,050	4,800	4,800	5,550	5,550	6,300



50-146

#579

Form **W-4**

(Rev. Dec. 1971)

Department of the Treasury—Internal Revenue Service  
**Employee's Withholding Exemption Certificate**

Type or print full name

*AUSTIN WILLIS*

Social security number

*059-18-450*

Home address (Number and street or rural route)

City or town, State and ZIP code

Marital status—check one (if married but legally separated, or spouse is a nonresident alien, check "Single"): ☐ Single ☐ Married

*If you expect to owe more tax than will be withheld, you may either claim fewer or zero exemptions or ask for additional withholding on line 8.*

- 1 Personal exemption for yourself. Write "1" if claimed . . . . . *1*
- 2 If married, personal exemption for your wife (or husband) if not separately claimed by her (or him). Write "1" if claimed . . . . . *1*
- 3 Special withholding allowance. (See Instruction 2.) Write "1" if claimed . . . . .
- 4 Exemptions for age and blindness (applicable only to you and your wife but not to dependents):
  - (a) If you or your wife will be 65 years of age or older at the end of the year, and you claim this exemption, write "1"; if both will be 65 or older, and you claim both of these exemptions, write "2" . . . . .
  - (b) If you or your wife are blind and you claim this exemption, write "1"; if both are blind, and you claim both exemptions, write "2" . . . . .
- 5 Exemptions for dependents. (Do not claim an exemption for a dependent unless you are qualified under instruction 5.) . . . . .
- 6 Additional withholding allowances for itemized deductions. See table on reverse . . . . . *13*
- 7 Add the exemptions and allowances (if any) which you have claimed above and enter total . . . . . *15*
- 8 Additional withholding per pay period under agreement with employer . . . . . \$

Under the penalties of perjury, I certify that the number of withholding exemptions and allowances claimed on this certificate does not exceed the number to which I am entitled.

(Date) *6-19* 19 *72* (Signed) *Austin P. Willis* A-2

EXHIBIT  
#2-111  
Rec'd  
JUN 20 1972  
FBI - BOSTON

**Table for Determining Number of Withholding Allowances Based on Itemized Deductions (Line 6 of Form W-4)**

If you expect to itemize deductions for the current year, you may be entitled to claim additional withholding allowances (line 6) and thus avoid having too much tax withheld. Your employer will treat each such allowance as a withholding exemption. The amount of itemized deductions for the current year cannot exceed the amount of itemized deductions (or standard deduction) claimed on your return for the preceding year (or 2nd preceding year if you have not yet filed your return for the preceding year), plus additional determinable deductible amounts.

These additional allowances will remain in effect until you file a new W-4 with your employer. For detailed information on allowable itemized deductions, see Form 1040 instructions.

**HOW TO USE THE TABLE**

1. Find the line in the table that includes your estimated salary and wage amount and that shows your status as either a single employee (Part I), a married employee whose spouse is not employed (Part II), or a married employee whose spouse is also employed (Part III). Also, use Part III if you are an employee who is holding more than one job concurrently.

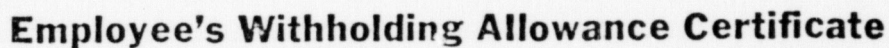
2. Read across that line until you find the column that includes the amount of your estimated itemized deductions.

3. Note the number of allowances shown at the top of the column. This is the maximum number of additional withholding allowances you may claim on line 6.

**Married Couples.**—If you and your wife are both employed and file a joint return, determine your withholding allowances based on your combined wages and deductions. If you file a joint return and your spouse is not employed, use Part II. If you are filing a joint return and both are employed, use Part III to determine the total number of withholding allowances to which you are jointly entitled (you may allocate such withholding allowances between yourselves). However, if in your last filing you filed separate returns, and if you expect to file separately this year, each of you must make your determination on the basis of your own wages and deductions and determine the number of withholding allowances for each from Part III.

Estimated salaries and wages	Number of additional withholding allowances for the amount of itemized deductions shown in the appropriate column (See Line 6 on other side)												
	0	1	2	3	4	5	6*						
	PART I: SINGLE EMPLOYEES												
	Under	At least	But less than	At least	But less than	At least	But less than	At least	But less than	At least	But less than	At least	But less than
Under \$8,000.....	\$1,700	\$1,700	\$2,450	\$2,450	\$3,200	\$3,200	\$3,950	\$3,950	\$4,700	\$4,700	\$5,450	\$5,450	\$6,200
8,000-10,000.....	1,800	1,800	2,550	2,550	3,300	3,300	4,050	4,050	4,800	4,800	5,550	5,550	6,300
10,000-12,000.....	2,200	2,200	2,950	2,950	3,700	3,700	4,450	4,450	5,200	5,200	5,950	5,950	6,700





### How Many Withholding Allowances May You Claim?

### Figure Your Total Withholding Allowances Below

\*If you are in doubt as to whom you may claim as a dependent, see the instructions which came with your last Federal income tax return or call your local Internal Revenue Service office.

## Completing New Form W-4

▼ Give the bottom part of this form to your employer; keep the upper part for your records and information ▼

## What If You Itemize Deductions?

If you expect to itemize deductions on your income tax return, you may be entitled to claim one or more additional withholding allowances on line (j) on page 1. You may claim one additional withholding allowance for each \$750, or fraction of \$750, by which you expect your itemized deductions for the year to exceed the amounts shown in columns (A), (B), or (C) below.

Estimated salaries and wages	Single employees (with one job) (A)	Married employees with one job (wife or husband is not working) (B)	Married employees (both husband and wife working) and employees working in more than one job (C)
Under \$8,000 . . . . .	\$1,700 . . . . .	\$1,700 . . . . .	\$1,700 . . . . .
\$8,000—10,000 . . . . .	1,800 . . . . .	1,800 . . . . .	2,000 . . . . .
10,000—12,000 . . . . .	2,200 . . . . .	2,200 . . . . .	2,700 . . . . .
12,000—15,000 . . . . .	2,400 . . . . .	2,400 . . . . .	2,700 . . . . .
15,000—20,000 . . . . .	2,400 . . . . .	2,400 . . . . .	3,300 . . . . .
20,000—25,000 . . . . .	2,400 . . . . .	2,400 . . . . .	4,000 . . . . .
25,000—30,000 . . . . .	2,900 . . . . .	2,400 . . . . .	4,900 . . . . .
30,000—35,000 . . . . .	3,800 . . . . .	2,400 . . . . .	5,900 . . . . .
35,000—40,000 . . . . .	4,900 . . . . .	2,700 . . . . .	6,900 . . . . .
40,000—45,000 . . . . .	6,400 . . . . .	3,500 . . . . .	7,900 . . . . .
45,000—50,000 <sup>1</sup> . . . . .	7,900 . . . . .	4,500 . . . . .	9,100 . . . . .

<sup>1</sup> If your annual salary or wages exceeds \$50,000, you may claim one additional withholding allowance for each \$750, or fraction of \$750, by which your expected itemized deductions will exceed the following: A single employee with one job—19 percent of annual salary or wages; A married employee with one job whose wife or husband is not working—13 percent of annual salary or wages; A married employee whose wife or husband is also working, or an employee who holds more than one job—22 percent of the combined or total annual salary or wages.

## Determining Withholding Allowances For Itemized Deductions

The worksheet below will be helpful to you in determining whether your expected itemized deductions entitle you to claim one or more additional withholding allowances.

### Worksheet

1 Total estimated annual salary or wages (from all sources) . . . . .		1	\$ 14,400 <sup>00</sup>
2 Total expected itemized deductions for the year . . . . .		2	\$ 14400 <sup>00</sup>
3 Appropriate amount from column (A), (B), (C) or footnote 1, above . . . . .		3	2700
4 Balance. Subtract line 3 from line 2. (If "0" or less, you are not entitled to additional allowance(s) for itemized deductions) . . . . .		4	\$ 12,000
5 If the amount on line 4 is:			
Between \$0—\$750 . . . . .	Enter on line 5 1	Between \$2,251—\$3,000 . . . . .	Enter on line 5 4
751—1,500 . . . . .	2	3,001—3,750 . . . . .	5
1,501—2,250 . . . . .	3	3,751—4,500 . . . . .	6
		Between \$4,501—\$5,250 . . . . .	Enter on line 5 7
		5,251—6,000 . . . . .	8
		6,001—6,750 . . . . .	9
Note: If the amount on line 4 is over \$6,750 you get 9 allowances, plus 1 allowance for each \$750 or fraction thereof by which the amount on line 4 exceeds \$6,750. If the balance on line 4 is less than "0," you may be having too little tax withheld. You can generally avoid this by claiming one less allowance (than the total number to which you are entitled) for each \$750 by which the estimated deductions on line 2 are less than the amount on line 3.		5	16
			Enter this number on line (j), page 1.



# Employee's Withholding Allowance Certificate

#579

(This certificate is for income tax withholding purposes only; it will remain in effect until you change it.)

Type or print your full name

AUSTIN P. WILLIS

Your social security number

059-18-4809

Home address (Number and street or rural route)

SHEPPARD RD

Marital status

☐ Single ☒ Married

City or town, State and ZIP code

13460

(If married but legally separated, or wife (husband) is a nonresident alien, check the single block.)

1 Total number of allowances you are claiming . . . . .

21

2 Additional amount, if any, you want deducted from each pay (if your employer agrees) . . . . . \$

I certify that to the best of my knowledge and belief, the number of withholding allowances claimed on this certificate does not exceed the number to which I am entitled.

Signature ▶

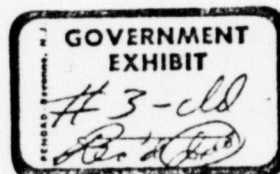
Austin P. Willis A-3

Date ▶

5-18

1973

21





**If You Need More Detailed Information, See the  
Instructions that Came with Your Last Federal Income  
Tax Return or Call Your Local Internal Revenue Office.**

1                   MARION A. FOSTER, called as a witness,  
2           having been first duly sworn by the Clerk, was  
3           examined and testified as follows:

4                   DIRECT EXAMINATION

5   BY MR. WELCH:

6   Q   Mrs. Foster, keep your voice up good and loud,  
7       so that the jurors in the last two seats can hear  
8       you.

9                   Would you tell the ladies and gentlemen  
10       of the jury how you are employed?

11   A   I am a Cost Clerk.

12   Q   A Cost Clerk?

13   A   Yes.

14   Q   And I think that you have to speak up louder, please.  
15       For what company?

16   A   Simmons Precision.

17   Q   And was that formerly General Laboratory Associates  
18       in Norwich, New York?

19   A   Yes.

20   Q   And how long have you been employed with that company?

21   A   Approximately 15 years.

22   Q   So you were employed there in 1972 and in 1973?

23   A   Yes.

24   Q   I am going to hand you what has been marked as  
25       Government's Exhibit No. 3 for identification.

1 (Document marked Government's Exhibit  
2 No. 3 for identification.)

3 BY MR. WELCH:

4 Q Now, I would like to ask you: Have you seen that before?  
5 (Offering)

6 A Yes, I have.

7 Q And when was the first time that you saw that?

8 A May 18th, 1973.

9 Q And under what circumstances did you see that?

10 A I was Acting Payroll Clerk and Mr. Willis brought  
11 this in to me.

12 Q You say you were the Acting Payroll Clerk?

13 A Yes, the Payroll Supervisor was on vacation.

14 Q Is that Mrs. Panaro that was just here?

15 A Yes.

16 Q And Mr. Willis brought that to you?

17 A Yes.

18 Q Did he say anything when he brought that to you?

19 A He asked me a question that I could not answer.

20 Q Do you recall today what that question was?

21 A No, I don't.

22 Q When then did you or he do?

23 A I referred him to Mr. Turcot.

24 Q And who is Mr. Turcot?

25 A He is the Supervisor of Financial Accounting.



1 Q Do you know whether or not Mr. Willis went to Mr.  
2 Turcot?

3 A Yes, he did.

4 Q And did you take him there?

5 A I took him to Mr. Turcot and introduced him to him.

6 MR. WELCH: The United States offers  
7 Exhibit No. 3 into evidence.

8 MR. MERRILL: No objection.

9 THE COURT: Received.

10 THE CLERK: Exhibit No. 3, received  
11 in evidence.

12 (Government Exhibit No. 3 for  
13 identification, received into evidence.)

14 MR. WELCH: We have nothing further.

15 MR. MERRILL: I have no cross-  
16 examination.

17 THE COURT: You are excused, Mrs.  
18 Foster.

19 (Whereupon the witness was excused.)

20 MR. WELCH: Now, the United States  
21 calls Mr. Ronald P. Turcot.

22 RONALD P. TURCOT, called as a witness,  
23 having been first duly sworn by the Clerk, was  
24 examined and testified as follows:  
25

## DIRECT EXAMINATION

BY MR. WELCH:

Q Mr. Turcot, please keep your voice up good and loud so that the jurors on the end can hear you. Tell the ladies and gentlemen how you are employed.

A I am the Supervisor of Financial Accounting for Simmons Precision.

Q And is Simmons Precision formerly known as General Laboratory Associates?

A Yes, it was. There was a name change.

Q And how long have you been the Supervisor of Financial Accounting?

A Three and a half years.

Q And in 1972 and 1973 what were your duties?

A I was always the Supervisor of Financial Accounting.

Q I see. And that was for General Laboratory Associates?

A Yes.

Q And briefly describe to the ladies and gentlemen of the jury what your duties consisted of?

A I supervised the payroll section, Accounts Payable, and Accounts Receivable, and took care of the General Ledger and Financial Statement of the Corporation.

Q And were you a Supervisor to Mrs. Panaro, and Mrs. Foster, who just testified here?

A Yes, I am.

1 Q Do you know Mr. Austin Willis?

2 A Not personally, no.

3 Q Have you had occasion to meet him?

4 A I have met him, yes.

5 Q Do you recall meeting Mr. Austin Willis on May 18th,  
6 1973?

7 A Yes, I do.

8 Q And would you tell us what took place on that day?

9 A Pardon me?

10 Q What were the circumstances of that meeting?

11 A Mrs. Foster brought Mr. Willis into my office and  
12 introduced Mr. Willis to me, and Mr. Willis requested  
13 that I refund the amount of Federal and State withholding  
14 that we were taking out of his paycheck the previous  
15 day.

16 Q And what did you say?

17 A I told him I wasn't authorized to give any refunds,  
18 that he would have to contact the Internal Revenue.

19 Q Mr. Turcot, I am going to hand you what has been  
20 marked for identification as Government's Exhibit No. 5  
21 (offering).

22 (Document marked as Government's  
23 Exhibit No. 5 for identification.)

24 BY MR. WELCH:

25 Q Have you seen that before (offering)?



1 A Yes, I have.

2 Q When was the first time that you saw that?

3 A Mr. Willis left this on my desk when he was in my  
4 office that day.

5 Q Mr. Willis did, and this is May 18th, 1973?

6 A Yes, sir.

7 Q Did you see Mr. Willis fill that out?

8 A No, sir.

9 Q Now, as part of your duties, are you aware of what  
10 W-4 withholding certificates or forms your company  
11 had during that period of time?

12 A Yes, sir.

13 Q And did your company have a form similar to that in  
14 Exhibit 5, during that period of time?

15 A No, sir.

16 MR. WELCH: If your Honor please, I  
17 offer Government's Exhibit No. 5 in evidence.

18 MR. MERRILL: I am going to object.  
19 I don't think that there has been a foundation.

20 THE COURT: May I see it?

21 MR. WELCH: Yes (offering to the Court).

22 THE COURT: I think I will sustain it.  
23 How do you connect this with the defendant?

24 MR. WELCH: The witness has just  
25 indicated that Mr. Willis left it in his office on the

1 occasion when he was just -- I have Exhibit No. 3  
2 which is in evidence, and may I hand that to your  
3 Honor?

4 THE COURT: I will overrule that.

5 THE CLERK: Government's Exhibit 5,  
6 received in evidence.

7 (Government's Exhibit 5 for identi-  
8 fication, marked received in evidence.)

9 MR. MERRILL: Please note my exception,  
10 if your Honor please.

11 THE COURT: Right.

12 BY MR. WELCH:

13 Q Now, Mr. Turcot, I hand you what has been marked  
14 for identification as Government Exhibit No. 4,  
15 and ask you if you have seen that before (offering)?

16 A Yes, I have.

17 (Document marked Government's Exhibit  
18 No. 4 for identification.)

19 BY MR. WELCH:

20 Q And where have you seen that, or where was the first  
21 time you saw that?

22 A The first time I saw that is when we went back and  
23 researched the W-4's of Mr. Willis in our corporation.

24 Q And do you know on what date that became effective?

25 A I know the date that it became effective against the



1 payroll. We don't know the date that it was  
2 submitted as it is undated.

3 Q And what date did it become effective?

4 A It is my opinion, and I believe that the date is,  
5 if I can see it; it was 3/25/72, and the payroll  
6 ended 3/25/72.

7 MR. WELCH: If your Honor please, we  
8 offer into evidence Exhibit No. 4 (offering to  
9 Counsel).

10 MR. MERRILL: May I have a voir dire  
11 on this?

12 THE COURT: Yes.

13 VOIR DIRE EXAMINATION

14 BY MR. MERRILL:

15 Q Was that notation made at the time?

16 A This was made upon the investigation of the Internal  
17 Revenue Services, and they asked me to put a date on  
18 this as to when it was effective.

19 MR. MERRILL: Thank you. I have no  
20 objection.

21 THE CLERK: Government's Exhibit No. 4  
22 received in evidence.

23 (Government's Exhibit 4 for identi-  
24 fication, received in evidence.)  
25

1 BY MR. WELCH:

2 Q Now, Mr. Turcot, in preparation for testifying here  
3 today, did you have occasion to review the payroll  
4 records of General Laboratory Associates for 1972  
5 and 1973, for Mr. Austin Willis?

6 A Yes, sir.

7 Q And as a result of that did you cause to be prepared  
8 a summary of the weekly paychecks of Mr. Willis for  
9 the gross pay of Mr. Willis, and the Federal withhold-  
10 ing that was taken out of his pay by General  
11 Laboratory Associates?

12 A Yes, sir.

13 Q I am going to hand you what has been marked as  
14 Government's Exhibit No. 6, and ask you if you have  
15 seen that before?

16 (Document marked Government's Exhibit  
17 No. 6 for identification.)

18 A Yes, sir.

19 Q And where have you seen that?

20 A I prepared it in the office.

21 Q Is that the summary that I just asked you about?

22 A Yes, sir.

23 MR. WELCH: If your Honor please, I am  
24 going to offer No. 6 into evidence.

25 MR. MERRILL: No objection.

1 THE COURT: Received.

2 THE CLERK: Government Exhibit No. 6  
3 received in evidence.

4 (Government Exhibit No. 6 for  
5 identification, received in evidence.)

6 BY MR. WELCH:

7 Q Now, Mr. Turcot, keeping your voice up good and loud,  
8 and just don't respond to me because I am standing  
9 close, but to the jurors at the other end: Would you  
10 explain to the ladies and gentlemen how you computed  
11 these figures that are in here? For example, what  
12 does "W.E." stand for in Column 1?

13 A That stands for week ending; the payroll period ending.

14 Q And underneath that are the dates at the end of each  
15 week, is that correct?

16 A Yes.

17 Q And the next column is the gross pay?

18 A Yes, the gross pay of Mr. Willis.

19 Q And then the next column says "actual Federal W.H.", and  
20 what does that stand for?

21 A That is actual Federal withheld from Mr. Willis on  
22 those different periods.

23 Q So that from this summary we can see exactly what was  
24 withheld during the period that we have asked you about?

25 A Yes, sir.



1 Q Now, Mr. Turcot, on the third page there is an  
2 indication table denoting beyond 10 exemptions, and  
3 yet I note on 5/12/73, in the column or at the time  
4 at which, according to this record, there were 15  
5 exemptions in effect, and it was \$4.80 was withheld.  
6 If the table does not reflect beyond 10 exemptions, how  
7 was that calculated?

8 A Well, we use, at our organization, the figures are  
9 put into the computer, using the exact percentage  
10 method of circular lists that are distributed to us.

11 Q And the computer figures that out?

12 A The computer did all of the calculations, yes.

13 Q All right. Mr. Turcot, I am going to hand you what  
14 has been marked for identification as Government's  
15 Exhibits 7 and 8.

16 (Documents marked Government's Exhibits  
17 7 and 8 for identification.)

18 BY MR. WELCH:

19 Q Have you seen these before (offering)?

20 A Yes, sir.

21 Q And where have you seen those before?

22 A These are employer's copies, which we keep in our  
23 safe at work.

24 Q Employer's copies of what?

25 A Of the W-2 statements.

1 Q Was that prepared by your company, then?

2 A Yes, sir.

3 Q All right.

4 MR. WELCH: The United States offers  
5 Exhibits 7 and 8 into evidence.

6 MR. MERRILL: No objection.

7 THE COURT: Received.

8 THE CLERK: Government's Exhibit No. 7  
9 and No. 8 received in evidence.

10 (Government's Exhibits Nos. 7 and 8  
11 marked for identification, received in evidence.)

12 BY MR. WELCH:

13 Q Now, Mr. Turcot, I am going to show you Government's  
14 Exhibits Nos. 9, 10, 11, and ask you if you have seen  
15 those before offering)?

16 (Documents marked Government's.  
17 Exhibits Nos. 9, 10 and 11, for identification.)

18 A Yes.

19 Q And when have you seen those?

20 A Upon researching the previous W-4's of Mr. Willis  
21 that were on file in our company.

22 Q Those are the previous W-4's on file with your company?

23 A Yes, sir.

24 MR. WELCH: If your Honor please, we  
25 offer into evidence Exhibits 9, 10 and 11.



1 MR. MERRILL: No objection.

2 THE CLERK: Government's Exhibits 9, 10  
3 and 11, received in evidence.

4 (Government's Exhibits 9, 10 and 11  
5 for identification, received in evidence.)

6 MR. WELCH: I have no further questions  
7 of Mr. Turcot, your Honor.

8 CROSS-EXAMINATION

9 BY MR. MERRILL:

10 Q Mr. Turcot, you said that Mr. Willis came into your  
11 office and requested a refund?

12 A Yes, sir.

13 Q What amount of refund was he looking for?

14 A I believe without the worksheet in front of me that  
15 it was \$4.80 in Federal tax, and \$1.30 State tax.  
16 That was the amount of the Federal and State withholding  
17 of the previous day.

18 Q Now, I show you Government's Exhibit 5 received in  
19 evidence, and you didn't actually see Mr. Willis fill  
20 that out, did you?

21 A No, sir.

22 Q And if you know, is that when Mr. Willis was in your  
23 office, and that was left there?

24 A Yes, sir.

25 Q And you do not know if this was Mr. Willis' worksheet?

1 A I believe it was.

2 Q Of your own personal knowledge?

3 A Yes, sir, because this was not in my office before  
4 he came in, and we did not have this current form  
5 in our company at that time.

6 Q But you didn't see Mr. Willis fill it out?

7 A No, sir.

8 Q How do you know it was his, that he filled it out?

9 A I can't say who filled it out. I don't know who filled  
10 it out.

11 MR. MERRILL: I have no further  
12 questions.

13 MR. WELCH: Nothing further of this  
14 witness, your Honor.

15 THE COURT: You are --

16 MR. MERRILL: (Interrupting) Pardon  
17 me, but I have some more questions.

18 RECROSS EXAMINATION

19 BY MR. MERRILL:

20 Q Did you review this with Mr. Willis?

21 A No, I did not.

22 MR. MERRILL: I have no further  
23 questions.

24 MR. WELCH: I have no further questions,  
25 your Honor. However, I would request, your Honor,



1 in view of the speed with which these documents  
2 went into evidence, that we be allowed to pass them  
3 among the jurors?

4 THE COURT: All right.

5 MR. WELCH: I am passing them in the  
6 order in which they were marked.

7 (Whereupon the Exhibits were circulated  
8 among the jurors.)

9 THE COURT: We will take our luncheon  
10 recess at this point. Do not talk about the case, and  
11 do not let anybody talk about it with you. Have a nice  
12 lunch.

13 (Whereupon the jury was excused.)

14 THE CLERK: Court stands in recess  
15 until 1:30.

16 (Whereupon the Court stood in recess  
17 until 1:30 p.m.)  
18  
19  
20  
21  
22  
23  
24  
25



1 (Whereupon the following proceedings  
2 took place before the Judge and a jury:)

3 THE COURT: Next witness.

4 MR. WELCH: The United States calls  
5 Mrs. Lillian Mosey.

6  
7 LILLIAN MOSEY, called as a witness,  
8 having been first duly sworn by the Clerk, was  
9 examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. WELCH:

12 Q Mrs. Mosey, I would like to ask you to keep your  
13 voice up good and loud so that the ladies and  
14 gentlemen of the jury can hear you and so that  
15 I can hear you. Tell the ladies and gentlemen where  
16 you live.

17 A I live at 11 Spinners Court in Sherburne, New York.

18 Q And how long have you lived there?

19 A Over 23 years.

20 Q And do you know Austin Willis?

21 A Yes, I do.

22 Q And do you know where Austin Willis lives?

23 A Yes.

24 Q Where?

25 A I don't know if it is 5 or not. But he lives on

1 Spinners Court.

2 Q On your street?

3 A Yes.

4 Q So that you are a neighbor of Mr. Willis?

5 A Yes.

6 Q And how long have you been a neighbor of Mr. Willis?

7 A Well, I would say seven years. Maybe more than that.

8 Q And were you living in your present house when Mr.

9 Willis moved into his present house?

10 A Yes.

11 Q And Mr. Willis still lives in that house?

12 A Yes.

13 Q All right, just limiting yourself, then, to the  
14 period of time in which Mr. Willis has lived in that  
15 house, approximately seven years, you feel?

16 A I would say yes.

17 Q How many children are living in that house or have  
18 lived in that house with Mr. Willis?

19 A In the beginning, there was five that I know of.

20 Q And then what happened?

21 A Then, as they graduated, they went away.

22 Q And how many live there now?

23 A There is three there now.

24 Q So that in 1972, and 1973, there would have been  
25 five in that house, is that correct?



1 A Yes.

2 Q Five children?

3 A Yes.

4 Q Do you know whether or not Mr. Willis has any other  
5 dependents living in that house with him?

6 A No, I don't.

7 MR. WELCH: I have no further questions,  
8 your Honor.

9 MR. MERRILL: May I have a moment?

10 THE COURT: Yes.

11 CROSS-EXAMINATION

12 BY MR. MERRILL:

13 Q Mrs. Mosey, I just have one question of you: Does  
14 Mr. Willis enjoy a good reputation in the neighborhood  
15 for honesty?

16 A I would think possibly. I don't know him that well,  
17 for that.

18 MR. MERRILL: I have no further questions.

19 MR. WELCH: No further questions.

20 THE COURT: You are excused.

21 (Whereupon the witness was excused.)

22 MR. WELCH: If your Honor please, and  
23 in an effort to zero right into the issues of this  
24 trial, the Defendant and the Government have agreed  
25 upon certain stipulations, and I would like to read



1           them to the jury.

2                   THE COURT: All right.

3                   MR. WELCH: It is hereby stipulated  
4           and agreed by the Government and the Defendant that  
5           on or about December 20th, 1965, Austin P. Willis did  
6           sign and file with General Laboratory Associates  
7           Exhibit No. 11, a Form W-4.

8                   On or about April 16th, 1966, Austin  
9           P. Willis did sign and file with General Laboratory  
10          Associates, Exhibit No. 9, a Form W-4.

11                   On or about March 19, 1972, Austin P.  
12          Willis did sign and file with General Laboratory  
13          Associates, Exhibit No. 4, a Form W-4.

14                   On or about June 19th, 1972, Austin P.  
15          Willis did sign and file with General Laboratory  
16          Associates, Exhibit 2, a Form W-4.

17                   On or about May 18th, 1973, Austin P.  
18          Willis did sign and file with General Laboratory  
19          Associates. Exhibit 3, a Form W-4.

20                   It is hereby stipulated and agreed  
21          by the Government and the Defendant that Austin P.  
22          Willis was born May 25th, 1911, and is not nor has  
23          he ever been blind.

24                   Further, that the wife of Austin P.  
25          Willis was born on August 4th, 1912, and is not, nor

1 has she ever been blind.

2 Their children are Hazel Willis, born on  
3 October 30th, 1936; Laura Mae Willis, born on  
4 November 29th, 1937; Lawrence Allen Willis, born on  
5 January 31st, 1939; Harriet Elizabeth Willis, born  
6 on August 10th, 1940; Lyle Edward Willis, born on  
7 September 3rd, 1944; David Perry Willis; Mary Ellen  
8 Willis; Daniel Prentice Willice; John Charles Willis;  
9 Ruth Marinda Willis.

10 If your Honor please, I would like to  
11 tender to the Court a document which the Defendant  
12 and the Government have stipulated to the authenticity  
13 of, and which we are offering into evidence. That  
14 will be Government Exhibit No. 12.

15 THE CLERK: Government Exhibit No. 12,  
16 marked for identification.

17 MR. MERRILL: No objection, your Honor.

18 THE COURT: Received.

19 THE CLERK: Government Exhibit 12  
20 received in evidence.

21 (Document marked Government's Exhibit  
22 12 for identification, and received in evidence.)

23 MR. WELCH: If your Honor please, the  
24 Government calls Reider Tholfsen.  
25



1 REIDER THOLFSEN, called as a witness,  
2 having been first duly sworn by the Clerk, was  
3 examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. WELCH:

6 Q Would you tell the ladies and gentlemen of the jury  
7 where you are employed?

8 A I am employed in Norwich, New York.

9 Q I can't hear you.

10 A Norwich, New York.

11 Q And what is your employment?

12 A I am with the Internal Revenue Service, a Revenue Agent  
13 in Chenango County.

14 Q You are speaking rather rapidly, and I cannot under-  
15 stand you, and I don't know if the court reporter  
16 can, and I am sure the ladies and gentlemen of the  
17 Grand Jury can't. Tell us again.

18 A I am with the Internal Revenue Service, and do  
19 Internal Revenue work out of Chenango County.

20 Q And Chenango County includes Norwich and Sherburne,  
21 New York?

22 A Yes, it does.

23 Q And briefly -- well, first of all, tell us how long  
24 you have been so employed?

25 A Fourteen years.



1 Q At that office?

2 A Yes, sir.

3 Q With similar duties?

4 A Yes, sir.

5 Q And what are those duties?

6 A My basic function is to audit income tax returns  
7 and provide assistance to people coming in who want  
8 help with their income tax problems.

9 Q How many people are in that office?

10 A It is a two-man office. We have a Revenue Agent,  
11 myself, and a Clerk overseer, and two all told.

12 Q And when you say to render taxpayers assistance,  
13 what does that include?

14 A People come in for assistance during the filing  
15 season and ask for help in the preparation of their  
16 returns, and that includes preparation of any document  
17 that they have trouble with, like a W-2, or a W-4, or  
18 like that.

19 Q Is it fair to say, then, that you have lengthy  
20 experience with W-4 forms, and personal income tax  
21 returns?

22 A Yes, sir.

23 Q And you are familiar with the filling out of those  
24 forms?

25 A Yes, sir.

1 Q As the law applies thereto?

2 A Yes, sir.

3 Q Now, you have been sitting in this room for the  
4 duration of this trial, is that correct?

5 A Yes, sir.

6 Q And you have had an opportunity to review many of  
7 the exhibits that have been offered in evidence?

8 A Yes, sir.

9 Q I would like to hand you what has been marked in  
10 evidence as --

11 MR. WELCH: I have neglected to pass  
12 this around to the jury, after it was presented,  
13 and it might help with some explanation, if they  
14 have a chance to review it. May I tender it to the  
15 jury?

16 THE COURT: Yes.

17 (Additional exhibits were given to the  
18 members of the jury.)

19 THE COURT: Do you happen to have  
20 photostats of that?

21 MR. WELCH: Yes.

22 (Additional photostats were furnished  
23 to the jury.)

24 BY MR. WELCH:

25 Q Before I passed that exhibit around to the jury, I



1 asked you if you had an opportunity to review them,  
2 and does that include reviewing that exhibit, also?

3 A Yes, it does.

4 Q And that purports to be a 1971 income tax return for  
5 Mr. Austin Willis and his wife, is that correct?

6 A Yes, sir.

7 Q And they are -- and Mr. Willis has claimed five  
8 dependents, is that correct?

9 A Yes.

10 Q And that is dated February of 1972, is that correct?

11 A That is correct.

12 Q Now then, have you had an opportunity to review  
13 Exhibits 3, 2, and 4, the withholding allowance  
14 certificates which are in question at this trial?

15 A Yes, I have.

16 Q Exhibit 4 was filed on March 19th, 1972, and claims  
17 10 exemptions or allowances; Exhibit 2 was filed  
18 about 6/19/72, and claims 15, and Exhibit 3 was filed  
19 about May 18th, 1973, claiming 21. I would like to ask  
20 you, then, to explain to the ladies and gentlemen of  
21 the jury, if a man has five dependent children and a  
22 non-working wife, what deductions is he allowed to  
23 claim on a W-4 form?

24 A All right. He is allowed to claim one --

25 Q (Interrupting) I meant exemptions or allowances.



1 A One exemption for the husband, and one for the wife.  
2 Then one exemption for each of the children, which  
3 is five, and one special exemption for the non-working  
4 wife, and a total of eight would be allowed on the W-4  
5 form.

6 Q Well now, in view of the claim of 10 allowances, on  
7 what other basis could the other remaining allowances  
8 be reached?

9 A One other basis, and that is for what they call  
10 excess itemized deductions. That is simply the  
11 amount of estimated itemized deductions that the  
12 taxpayer might have for the coming year above and  
13 beyond the standard deductions that Uncle Sam allows  
14 every taxpayer. The excess over the standard  
15 deductions.

16 Now, how this estimate is made is  
17 concerned, or is based simply on taking the actual  
18 amount of itemized deductions on the previous year,  
19 which would be 1971 in this case, and adding to it  
20 any determinable additions.

21 Q What are they?

22 A They are something that you can foresee, and the  
23 regulations have a little example, which I can pass  
24 on to you, and that is that a man in November was  
25 in an alimony suit, and the Judge awarded his wife,

1 this man had to pay \$100 a week in 1973, and then,  
2 this would be a determinable addition. He would know  
3 that he had to pay \$100 a week which would be deductible  
4 in the following year.

5 So he would simply take his '71  
6 deductions, and add to that the determinable amount,  
7 and that would be his estimated itemized deductions  
8 for the coming year.

9 Q Did you cause to be prepared a calculation of how  
10 many anticipated itemized, or how many itemized  
11 deductions Mr. Willis would have had to anticipate  
12 when he filed these three W-4's?

13 A Yes, I have.

14 Q I show you Exhibit No. 13, and ask you if that is your  
15 calculation?

16 A That is my calculation.

17 (Document marked Exhibit No. 13, for  
18 identification.)

19 MR. WELCH: Now, I would like to offer  
20 Exhibit 13 in evidence.

21 MR. MERRILL: No objection.

22 THE COURT: Received.

23 THE CLERK: Exhibit No. 13 for  
24 identification, received in evidence.

25 (Document marked Government's Exhibit



1 No. 13 for identification, received in evidence.)

2 BY MR. WELCH:

3 Q With this in mind, to claim a total of 10 allowances,  
4 how much would Mr. Willis have to anticipate in  
5 itemized deductions that year?

6 A In order to claim 10, he would have to itemize \$3200.

7 Q You have to anticipate that for the coming year?

8 A Yes, \$3200 of itemized deductions for that year.

9 Q And in order to claim 15 exemptions, how much anticipated  
10 and itemized deductions would you have to have?

11 A \$6,950.

12 Q And in order to claim 21 exemptions, how much?

13 A \$11,450.

14 Q In anticipated itemized deductions?

15 A Yes, sir.

16 MR. WELCH: I would like to tender  
17 Exhibit 13 to the jury, your Honor. I do have exact  
18 copies of this, if I may.

19 (The Exhibit was furnished to the  
20 members of the jury.)

21 MR. WELCH: I have no further questions,  
22 your Honor.

23 CROSS-EXAMINATION

24 BY MR. MERRILL:

25 Q Mr. Tholfsen, the Internal Revenue laws were changed



1 to allow a taxpayer to claim an exemption for his  
2 anticipated itemized deduction, is that correct?

3 A Yes.

4 Q And do you recall what year?

5 A I do not.

6 Q And it was here in the year 1972 that the taxpayer  
7 could claim exemptions for his itemized deductions?

8 A That is correct.

9 Q Do you, of your own knowledge, and being employed  
10 by the IRS for a number of years, know the reason  
11 that the laws were amended to allow this exemption  
12 to be claimed?

13 A I do not know, for a fact, but I have a good idea  
14 why it was changed.

15 MR. WELCH: I object, then, your Honor.

16 THE COURT: It seems to me that this  
17 is a matter of law. It is relevant, isn't it?

18 MR. MERRILL: I am asking him, your  
19 Honor, he being qualified as an expert.

20 THE COURT: I am an expert on the law,  
21 or at least I assume I am.

22 MR. MERRILL: I was asking a question  
23 of policy from the Internal Revenue Service.

24 THE COURT: It is not relevant. If you  
25 want to know the legislative history, bring it to my

1 attention.

2 BY MR. MERRILL:

3 Q From a practical standpoint, the change in the  
4 statutes allowed a taxpayer to take an increased  
5 amount of exemptions, is that correct, for his  
6 itemized deductions?

7 A Would you repeat the question, please?

8 Q I say, the change in the statute allowed the taxpayer  
9 to take an increased amount of exemptions based upon  
10 his itemized deductions?

11 A That is correct.

12 Q Therefore, returning more money to him, is that correct?

13 A Correct.

14 Q And also possibly freeing the IRS from having to  
15 process as many returns per year?

16 A I don't know the reason for it, but it is so that  
17 you don't take more withholding out of a person  
18 than he is entitled to pay.

19 Q Now, you based your computations here on the 1971  
20 return, and I call your attention to page Schedule A  
21 and B of the 1040 form for 1971 regarding medical.  
22 There is in the itemized deductions in that return  
23 for medical expense, is that correct?

24 A That is correct.

25 Q If, during the calendar year 1972, Mr. Willis, or a



1 relative of his became ill, and he was incurring  
2 medical bills --

3 A (Interrupting) Incurring medical bills?

4 Q Yes, incurring medical bills and expected to incur  
5 additional medical bills by reason of illness, couldn't  
6 he, based upon your statement that he can estimate  
7 his potential itemized deductions, increase his  
8 withholdings to reflect this medical expense?

9 A At the time that you fill out the W-4 he could take  
10 whatever he had already expended for that purpose  
11 at that time.

12 THE COURT: Are you telling us that  
13 he could not make an estimate of what that would  
14 be for the next year?

15 THE WITNESS: It would not be  
16 determinable. It would not be a fact of how much.  
17 You can incur expenses, but not pay them.

18 THE COURT: Is there some regulation  
19 that says he can't estimate it, unless it is  
20 mathematically determined, and somewhere in the  
21 regulations?

22 THE WITNESS: Many people can incur  
23 expenses, but not pay them.

24 THE COURT: I didn't ask you for an  
25 argument, but for an answer to the question. Would  
you put the question to him.



1 (The previous question was read by  
2 the reporter.)

3 THE WITNESS: The regulations in  
4 question is 3402, and that states that it has to be  
5 a determinable amount, and it has to be duly  
6 identifiable, and an event that has already occurred.

7 THE COURT: Then it has to be based  
8 on a past fact?

9 THE WITNESS: Identifiable event, is  
10 how it is worded; a demonstratable event.

11 THE COURT: I don't know how you can  
12 demonstrate an event in the future, without a crystal  
13 ball.

14 BY MR. MERRILL:

15 Q Well, a member of your family is ill, and do you  
16 consider that to be a demonstratable event?

17 A An ill person is a demonstratable event, but not  
18 for this person, unless expenses were incurred.

19 Q However, I show you Government's Exhibit 5, and is  
20 there anywhere in Government's Exhibit 5 that a  
21 definition of a determinable event, or is there any-  
22 where in that exhibit that it says that you have to  
23 have already incurred the expenses to make a claim here?

24 A Not on this form, no.

25 Q Isn't this the form that is supplied, millions of these

1 are supplied to the taxpayers?

2 A It says what you expect your itemized deductions to  
3 be for the year.

4 Q But you anticipate, and you expect, and what you  
5 estimate, and nowhere in that form does it say that  
6 you already have to have incurred them?

7 A That is correct.

8 THE COURT: Could I see the form, please?

9 MR. MERRILL: Certainly (offering).

10 THE COURT: Go ahead.

11 BY MR. MERRILL:

12 Q So that although you have regulations that state  
13 that a determinable or demonstratable -- what is it,  
14 again?

15 A Determinable conditions.

16 Q Determinable conditions. Nowhere in this form is  
17 that explained to the taxpayers?

18 A Not on that form.

19 Q This says "estimate," and you are expected to know that?

20 A On two prior forms it does say that, that Mr. Willis  
21 had signed. The two previous ones prior to that state  
22 that fact right on it, or the one prior. The one  
23 prior.

24 Q Would you tell me which one that would be?

25 A Right there (indicating).



1 Q It does say additional determinable deductible amounts?

2 A Yes, sir.

3 Q It doesn't say that you have to already have paid it,  
4 does it?

5 A It doesn't.

6 Q But doesn't this say on the front of Government  
7 Exhibit 4 -- is that correct?

8 A Yes.

9 Q Doesn't it say here and what line -- let me see, what  
10 does line 6 say?

11 A Additional withholding allowances for itemized  
12 deductions.

13 THE COURT: I just can't understand  
14 the witness. Would you read it again?

15 THE WITNESS: Additional withholding  
16 allowances for itemized deductions, see table on  
17 reverse.

18 BY MR. MERRILL:

19 Q But isn't it a fact that even on these -- on this  
20 particular exhibit, Government's Exhibit 4, we are  
21 still talking about your estimated itemized deductions?

22 A Yes, sir.

23 Q How many taxpayers do you know of that are intimately  
24 familiar with the Internal Revenue Code --

25 MR. WELCH: Objection.



1 THE COURT: Sustained.

2 BY MR. MERRILL:

3 Q During the course of your employment with the Internal  
4 Revenue Service, Mr. Tholfsen, you have had the  
5 opportunity to speak with and deal with numerous  
6 taxpayers, is that correct?

7 A That is correct.

8 Q And you can estimate how many taxpayers you have seen  
9 over the past 14 years?

10 A That is a hard thing to estimate.

11 Q It has been quite a few?

12 A Quite a few.

13 Q And have you formed any opinion as to --

14 MR. WELCH: (Interrupting) Objection,  
15 your Honor.

16 THE COURT: Let's hear the question.

17 BY MR. MERRILL:

18 Q Based upon your contact with these taxpayers, have you  
19 formed any opinion as to the amount of knowledge  
20 that these taxpayers have to the Internal Revenue  
21 Code?

22 MR. WELCH: Objection, your Honor.

23 THE COURT: Sustained.

24 MR. MERRILL: Just a minute, your Honor?

25 THE COURT: Yes.

1 BY MR. MERRILL:

2 Q Mr. Tholfsen, on Exhibit 13, your compilation of  
3 the itemized deductions, indeed the taxpayer could  
4 reasonably expect to incur \$3200 in medical expenses  
5 during that particular calendar year, and he could  
6 estimate that, would that be correct?

7 A If he could logically estimate that, that would be  
8 correct. If he could reasonably estimate that,  
9 yes.

10 Q Now, assuming, as you have, that everything remains  
11 as it was on the 1971 tax return, we have total  
12 itemized deductions of \$1,186, is that correct?

13 A That is correct.

14 Q Now, if we went and incurred additional, say, four or  
15 five thousand dollars in medical expenses, in fact,  
16 as far as your computations on line A and B, Mr.  
17 Willis could either have exceeded A, and perhaps  
18 come in very close to Item B?

19 A That is correct.

20 MR. MERRILL: I have no further  
21 questions.

22 MR. WELCH: I have no further questions,  
23 your Honor.

24 THE COURT: You are excused.

25 (Whereupon the witness was excused.)



1 MR. WELCH: At this time, the United  
2 States rests.

3 THE COURT: All right, the jury may take  
4 a short recess.

5 (Whereupon, the jury was excused.)

6 MR. MERRILL: May I approach the bench,  
7 your Honor?

8 THE COURT: In just a minute.

9 (The following took place at the bench,  
10 out of the hearing of the courtroom:)

11 MR. MERRILL: I am not completely  
12 familiar with the Federal system, and may I make a  
13 motion?

14 THE COURT: You can make a motion to  
15 dismiss it on the failure to provide a prima facie  
16 case.

17 MR. MERRILL: We move for a judgment  
18 of acquittal, based upon the Government's case, that  
19 they failed to prove a prima facie case, and failed  
20 to prove their case beyond a reasonable doubt.

21 THE COURT: The motion is denied.

22 MR. MERRILL: Thank you, your Honor.

23 THE COURT: Are you ready to proceed,  
24 or do you want a short recess?

25 MR. MERRILL: May we have a short recess?



1 THE COURT: Yes.

2 THE CLERK: Court stands in recess.

3 (After a short recess, the trial was  
4 resumed before the Judge and a jury.)

5 MR. MERRILL: The defense calls  
6 Austin P. Willis to the stand.

7  
8 AUSTIN P. WILLIS, called as a witness  
9 in his own behalf, having been first duly sworn by  
10 the Clerk, was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. MERRILL:

13 Q I want you to speak up so that the members of the jury  
14 can hear you.

15 Would you state your full name for the  
16 record.

17 A My name is Austin Willis, from Sherburne, New York.

18 Q And how old are you?

19 A I am 63.

20 Q And you are married?

21 A Yes, I am.

22 Q And how long have you been married?

23 A Well, I have been married pretty close to 40 years.

24 Q How long?

25 A About 40 years.

1 Q And you have how many children?

2 A I have ten children, altogether.

3 Q Mr. Willis, you have been sitting here, and you have  
4 heard the Government put on numerous witnesses  
5 regarding the matter of your W-4 forms during 1972,  
6 when you were employed down in Norwich?

7 A That is right.

8 Q Would you explain to the jury, basically, how you  
9 got yourself into this mess?

10 A Well, first I remember I got a W-4 form from the  
11 government, or the IRS, and they encouraged me to  
12 file a W-4 form, one of them. Then, of course, having  
13 sickness in the family and things, that is one  
14 reason --

15 MR. WELCH: (Interrupting) May I  
16 request that we have a date, or a time period?

17 THE COURT: Yes, I think that it is  
18 better to proceed by question and answer, rather  
19 than let the witness loose with a narrative, because  
20 otherwise we just don't get the case. I am not  
21 blocking your line of inquiry, and go ahead and ask  
22 whatever questions you want that are relevant.

23 BY MR. MERRILL:

24 Q You testified that you received a W-4 form from the  
25 Internal Revenue?



1 A I did, yes.

2 Q And do you recall when you received that?

3 A Pardon me?

4 Q Do you recall when you received that form?

5 A Well, it was back there, I guess, in '72, but it must  
6 be when -- yes.

7 Q And do you recall what that particular form said or  
8 what it was?

9 A Well, evidently they would rather that we would not  
10 have the money taken out, until -- well, then it saved  
11 them some problems, and some reprocessing, or whatever  
12 you want to call the thing, of the returns, see?

13 Q In other words, it is your understanding of this form  
14 that the Internal Revenue wanted you to take more  
15 deductions?

16 A That is right.

17 Q And was it also your understanding that their  
18 reasons, the Internal Revenue Services' reason was  
19 that it would cut down their amount of processing?

20 A That is right; that is right, the processing.

21 Q And what did -- what was your understanding that  
22 they had so much processing trouble?

23 A Well, I don't know. I have never read the Internal  
24 Revenue Code, or I don't know anything about it. I  
25 cannot say.

1 Q So you got a W-4 form, is that right?

2 A Right.

3 Q Now, would you explain to the jury how you figured  
4 the amount of exemptions that you claimed on your  
5 W-4 forms -- just a minute --

6 MR. WELCH: (Interrupting) May we  
7 approach the bench?

8 THE COURT: Yes.

9 (Whereupon the following took place  
10 at the bench, out of the hearing of the jury:)

11 THE COURT: Isn't there some kind of a  
12 policy statement from the IRS on these regulations?

13 MR. WELCH: I don't know where. Not  
14 that I am aware of.

15 THE COURT: I want to find out from  
16 somebody what this reason is. Can't they find it, or  
17 do you just call this an itemized deduction, and  
18 what is the situation for a man and his wife and kids?

19 MR. MERRILL: I think that what he says  
20 is true, and that is my understanding.

21 THE COURT: I would think that there  
22 has to be some explanation of this thing. I think  
23 that this is something vague, and it may be  
24 unconstitutional.

25 MR. WELCH: It might be.



1 THE COURT: Thank you.

2 (Whereupon the following took place  
3 before the Judge and the jury:)

4 BY MR. MERRILL:

5 Q Now, Mr. Willis, I am going to show you Exhibit 4,  
6 and this is a government 4 form, and it is undated,  
7 and you filed it, and did you claim on there a total  
8 of 10 exemptions? Would you explain how you figured  
9 the thing out, and how you derived or arrived at those  
10 10?

11 A I will tell you. On the W-4 form itself -- it is an  
12 estimate on deductions, estimated deductions, and on  
13 this, I don't -- I think that the part that is torn  
14 off here, it says for every \$750 that you expect to  
15 make, that gives you an extra exemption.

16 THE COURT: Just so the jury will  
17 understand, Mr. Willis, as I understand it, you were  
18 not trying to tell the Internal Revenue that you had  
19 10 children that you were taking exemptions for?

20 THE WITNESS: No, I wasn't.

21 THE COURT: You were trying to tell  
22 them whatever next it was, fine, that you had five  
23 exemptions for them, and you estimated that you  
24 would have five times \$750 in allowable deductions?

25 THE WITNESS: Right, right.

1 THE COURT: And that therefore according  
2 to their instructions you would be entitled to claim  
3 10 itemized exemptions?

4 THE WITNESS: Right, right.

5 THE COURT: You didn't have anything  
6 to do with the Internal Revenue concerning this change  
7 in exemptions, did you?

8 THE WITNESS: No.

9 THE COURT: And is that a change from  
10 what it had been, before?

11 THE WITNESS: Yes, these W-4's are a  
12 change from what the old form was.

13 THE COURT: What was the old form?

14 THE WITNESS: Well, I mean, as I remember  
15 the old ones were that you had to put down a figure,  
16 the number of exemptions, and --

17 THE COURT: (Interrupting) And that  
18 was based on the number of children?

19 THE WITNESS: Yes, yes.

20 THE COURT: Your wife and yourself and  
21 your children?

22 THE WITNESS: Right, right.

23 THE COURT: And now you have got a change  
24 that is not based on the number of children?

25 THE WITNESS: Right.



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THE COURT: Is that it?

THE WITNESS: Yes, that is true; that  
is true.

BY MR. MERRILL:

Q Mr. Willis, you put down on this form under --  
actually you have got an exemption for dependents,  
and did you mean to put that on that line, that  
number 7 there, and that is what it says?

A This is exemption allowances, it says.

Q Right here, additional withholding allowances.  
Now, is that what you meant to put down when you  
put down 7?

A No, right here let me -- additional withholding  
allowances -- yes.

Q But after that 7, you have got up here on exemptions  
for dependents, and do you see that, and see what I  
mean? You look at that 7 you put there, and you put  
that on line 5, which is exemptions for dependents.  
But you weren't trying to claim seven dependents, were  
you?

A No, I wasn't.

Q You were trying to claim 7 as itemized deductions?

A Right.

Q Now, in 1972 --

A (Interrupting) Pardon me?

1 Q In 1972 did there come a time when your wife became  
2 ill?

3 A That is right.

4 Q What was she ill with?

5 A Pardon me?

6 Q What was the matter with her?

7 A Well, she had a large tumor that she had to have  
8 removed.

9 Q And did she also have a heart condition?

10 A She has. She still has.

11 Q She still has a heart condition?

12 A That's right.

13 Q So that in 1972 weren't you expecting some medical  
14 bills?

15 A Yes, I was.

16 Q And as a matter of fact, did you incur medical bills  
17 in 1972?

18 A Pardon me?

19 Q As a matter of fact, did you not incur medical bills  
20 in 1972?

21 A Yes.

22 Q Do you remember -- do you remember the amount of  
23 medical bills that you incurred?

24 A I think it was \$5,000 or a little better.

25 THE COURT: Wait a minute, we can't hear



1 a thing.

2 BY MR. MERRILL:

3 Q Would you repeat that? What was the amount of bills?

4 A Around \$5,000.

5 Q Did you say \$5,000?

6 A Yes.

7 Q Now, was it your understanding that these W-4 forms  
8 allowed you to estimate your itemized deductions?

9 A That is right.

10 Q At any time were you aware of the definition or  
11 even the term "determinable itemized deductions"?

12 A Was I -- now, just pardon me, and let me get that  
13 straight. What I was aware of what?

14 Q Did you ever hear the term "determinable itemized  
15 deductions"?

16 A No.

17 Q Did you, at any time, know that you claim an itemized  
18 deduction on your W-4 form, that you had to pay the  
19 money already?

20 A That I had to pay the money?

21 Q Right. Did you think that you had to pay the money  
22 to make your claim on your W-4 form?

23 A Well, no. I mean, not to pay the money. But as I  
24 said, as I understood this, this was -- a -- not  
25 itemized, but estimated deductions that I had. I mean,

1           it was an estimate of what my deductions would be.  
2           I couldn't tell -- I paid a lot out for charity and  
3           for the church, and like that we had given.

4       Q     You go to church, don't you?

5       A     I sure do.

6       Q     And do you do what is commonly known as tithing?

7       A     I sure do.

8       Q     And would you explain to them, and maybe they don't  
9           know what it means to tithe.

10      A     Ten percent, I take, of my gross income.

11      Q     And what do you do with it?

12      A     I give it to the church.

13      Q     So all along, it was your understanding that you  
14           could estimate your itemized deductions?

15      A     That is right; that is true.

16      Q     Now, I show you Government's Exhibit 2, which is another  
17           W-4 form in which you claim 15 exemptions.

18      A     That is right.

19      Q     All told?

20      A     Right.

21      Q     And would you explain that?

22      A     I will. You see, this here is -- this is the W-4  
23           form, and it is on all that you take in. I had  
24           another job that -- I had another that I was doing,  
25           and it is all the money, not just in one place. But --



1 Q (Interrupting) So it was your understanding, then,  
2 and I want to make this clear to the jury, that  
3 this included all of your income?

4 A That is right.

5 Q And do you have some part-time work?

6 A I did. I did, yes.

7 Q And what kind of work?

8 A Well, I was doing carpenter work, and then I sold  
9 cars, too.

10 Q And it was your understanding that if you had additional  
11 income, if you did, then you could claim additional  
12 withholding allowances?

13 A That is right, m-m h-m-m.

14 Q And in what amount could you claim additional  
15 allowances?

16 A Pardon me, about what?

17 Q In what amount could you claim?

18 A Oh, what amount. I think it was -- it was \$15,000,  
19 or 16, and I forget.

20 Q I am saying: It was your understanding that if you  
21 earned extra money --

22 A Yes.

23 Q -- that you could claim additional?

24 A Yes. Pardon me? I think I misunderstood you. Yes,  
25 of \$750 that I took in extra, you say, according to

1 the W-4 form, it gave me another exemption.

2 Q Was it your understanding that for every \$750 of  
3 income you could take another exemption?

4 A Right, m-m h-m-m.

5 Q Where did you get that idea?

6 A Well, I took it off the W-4 form that was on the  
7 back of it.

8 Q May I show you Government's Exhibit 5, and there is an  
9 employee worksheet here. Where in the world did you  
10 get that idea for that?

11 A Well, let me see, that is -- right here (indicating).

12 Q Why don't you read it to the jury?

13 A All right. If the amount on line 4 is over \$6,750,  
14 you get 9 allowances plus 1 allowance for each \$750  
15 or fraction thereof by which the amount on line 4  
16 exceeds the \$6,750.

17 Q So it was your understanding, then, that for every  
18 \$750 additional income --

19 A That is right.

20 Q -- that you could claim an additional exemption?

21 A Yes.

22 Q Now, I show you Government's Exhibit 3 in which you  
23 claim 21 all told?

24 A That is right.

25 Q And was your theory the same on that? You were making



1 a little extra money?

2 A That is right.

3 Q So you would --

4 A (Interrupting) That is right. Lots.

5 Q And at the same time, during '73, you had additional  
6 medical expenses?

7 A I have had additional. I mean, in the past, I thought  
8 I would have now. I was not certain, about what I  
9 would have.

10 Q You weren't sure, but you figured there was a good  
11 chance that you would?

12 A Yes, there was a good chance that I would, yes.

13 Q And you never read the Internal Revenue Code, have you?

14 A No, I never have.

15 Q Have you ever seen a copy of it?

16 A No, I haven't. I have taken the W-4 form at face  
17 value, and that is it.

18 Q And you filled this out yourself?

19 A That is right.

20 MR. MERRILL: One moment, please.

21 THE COURT: All right.

22 BY MR. MERRILL:

23 Q Mr. Willis, at any time did you have any idea that  
24 you were breaking the law?

25 A No, I did not.

1 Q Were you trying to cheat the government?

2 A No, I never have.

3 Q Isn't it true that you figured that this is something  
4 that you were allowed to do?

5 A Yes, that I was allowed to do.

6 Q T his is a legitimate thing that you could do?

7 A Yes.

8 MR. MERRILL: I have no further  
9 questions.

10 THE COURT: Cross-examination.

11 CROSS-EXAMINATION

12 BY MR. WELCH:

13 Q Mr. Willis, just so that the jury and I and the Judge  
14 understand this, you did fill out each one of these  
15 exhibits, is that correct?

16 A Yes.

17 Q No. 4?

18 A Yes.

19 Q No. 2?

20 A Yes.

21 Q And No. 3?

22 A Yes.

23 Q And you filled out No. 4, which claims 10 allowances,  
24 is that correct?

25 A Right.



1 Q And you did that in March of 1972?

2 A Right.

3 Q So that in March of 1972 you anticipated that you were  
4 going to have enough itemized deductions in 1972 to  
5 allow you to make up the difference between what  
6 you have taken for your family, and this one deduction  
7 for each \$750 of itemized deductions?

8 A That is right.

9 Q But then in June of 1972, you decided that you were  
10 going to have more itemized deductions that year?

11 A I figured that I was, yes.

12 Q What changed?

13 A Well, I was taking in -- I was taking in more money.

14 Q What does that have to do with your itemized deductions?

15 A Because for every \$750 it gives me another itemized  
16 deduction.

17 Q What does the amount of money that you take in have  
18 to do with your itemized deductions?

19 A Because the more that you take in, the more they give  
20 you -- that is why I was working other jobs.

21 Q Let's talk about those other jobs. Where were they?

22 A I was working for myself.

23 Q Where, Mr. Willis?

24 A Whatever anybody wanted me to work.

25 Q Can you specifically tell us what jobs they were?

1 A Well, I probably could, but I mean, it was for  
2 different people, and neighbors.

3 Q Would you please tell us for whom --

4 THE COURT: (Interrupting) I am afraid,  
5 Mr. Welch, that this is just a little tete a tete  
6 between you and the witness. I am straining, and I  
7 cannot hear any answers.

8 BY MR. WELCH:

9 Q Would you please tell us where you worked on these  
10 other jobs?

11 A I worked for different people. I worked for --

12 Q (Interrupting) Specifically would you tell us who  
13 they were?

14 A Well, I worked for Raymond Bagnell, for one.

15 Q I didn't hear you.

16 A Raymond Bagnell, for one.

17 Q Doing what?

18 A I -- I don't think that, myself, I don't think that  
19 that enters into this.

20 Q I didn't understand your last statement.

21 A I don't feel that this enters into this.

22 Q Are you refusing to answer the question?

23 A I tell you -- I really don't feel that this is a  
24 legitimate question, where I worked. I worked  
25 several different places, but when I have to tell



1 someone every place I work --

2 THE COURT: (Interrupting) That is a  
3 proper question. You tell us where you worked.

4 THE WITNESS: O.K. I worked for  
5 Raymond Bagnell, and I worked for John Fahey.

6 BY MR. WELCH:

7 Q And what did you do for Raymond Bagnell?

8 A Carpenter work.

9 Q Whereabouts?

10 A In Columbus.

11 Q Columbus, where?

12 A New York.

13 Q And what kind of carpenter work?

14 A Oh, finishing work.

15 Q And this Mr. Bagnell's home, or someone else's home?

16 A Pardon me, what?

17 Q Where? On what?

18 A On his house.

19 Q I didn't hear you.

20 A In his home.

21 Q Mr. Bagnell's home?

22 A Yes.

23 Q Is he in the courtroom today?

24 A Yes.

25 Q I see. Now, Mr. Fahey, did you work for Mr. Joe Fahey?

1 A Yes, I did.

2 Q And is he in the courtroom right now?

3 A Yes, he is.

4 Q I see. Let's get back to these other W-4's again.  
5 You say that your wife was sick?

6 A Yes, a lot.

7 Q When was she sick?

8 A She was sick there in 1972.

9 Q And was she sick in 1973?

10 A She was -- she had been sick right along. She has  
11 heart trouble.

12 Q And so you anticipated in 1972 that you would have  
13 itemized medical deductions for medical expenses  
14 for her, is that correct?

15 A Right.

16 Q And did you?

17 A I did.

18 Q You did have them?

19 A Yes.

20 Q And you did itemize those on your income tax returns  
21 for 1972?

22 A What is that?

23 Q Did you itemize those deductions on the 1972 tax?

24 MR. MERRILL: Objection. I don't  
25 think that the question of his tax return is relevant  
here.



1 It is just a matter of his incurring  
2 the expense.

3 THE COURT: It is a matter more of the  
4 state of mind. I will overrule it.

5 MR. MERRILL: I am sorry.

6 THE COURT: It is a state of mind.

7 We are entitled to know what his background knowledge  
8 is of this thing.

9 BY MR. WELCH:

10 Q Did you itemize those deductions on your 1972 return?

11 A I couldn't say.

12 MR. WELCH: I would like to approach  
13 the bench, if I might.

14 THE COURT: Yes.

15 (Whereupon, the following took place  
16 at the bench, out of the hearing of the jury:)

17 MR. MERRILL: I don't know about these.  
18 He filed one of these protest tax returns. Now,  
19 I think that the probative value of this thing is  
20 of prejudice to the jury.

21 THE COURT: I have not seen it, and let  
22 me take a look at it. I agree. It is prejudicial.

23 MR. WELCH: May I be heard? We have a  
24 man who is claiming deductions, for anticipated medical  
25 expenses in 1972 and '73.

1 THE COURT: That is right.

2 MR. WELCH: I asked him if he took those  
3 itemized deductions from his gross expenses on his  
4 1972 return. Shortly thereafter he files 21, and  
5 he is claiming or expecting more deductions.

6 MR. MERRILL: He didn't say that.

7 THE COURT: But that is a copy of his  
8 protest. If it were relevant I would exclude it  
9 because it is prejudicial. I will weigh its probative  
10 value. I preclude you from getting into that now.

11 (Whereupon, the following proceedings  
12 took place before the Judge and the jury:)

13 BY MR. WELCH:

14 Q Now, Mr. Willis, in 1972 you said, I believe it was in  
15 your direct testimony, that you incurred approximately  
16 \$4,000 to \$5,000 worth of medical expenses for your  
17 wife in 1972, is that correct?

18 A I think it was.

19 Q And was it for -- maybe I misunderstood you. Was it  
20 for medical expenses in 1973 that you were anticipating  
21 being able to take additional deductions allowing you  
22 to take up to 21 on your W-4?

23 A Well -- yes. 1973, yes.

24 Q And what was the condition in 1972 that caused this  
25 extensive medical expenditure?



1 A Well, we have had quite a lot of medical expense.  
2 I just can't remember everything.

3 Q You remembered on direct testimony two specific  
4 ailments?

5 A What?

6 Q Something about a heart, and something else?

7 A Yes, I said that my wife, she does have heart trouble,  
8 and we have quite a little expense there.

9 Q In which year, 1972 or 1973?

10 A 1973 we did, too.

11 Q And how much expense did you have in 1973?

12 A 1973 I couldn't say, but I should say we have had  
13 probably about \$2,000.

14 Q Now, Mr. Willis, how much medical insurance do you have  
15 to pay for medical expenses?

16 A I had some Blue Cross then, but I did not have full  
17 coverage on it.

18 Q Did you have any insurance coverage at all in 1972  
19 and 1973?

20 A Not in 1972, I didn't.

21 Q Not even for yourself?

22 A No.

23 Q How about the company? Did the company insure you?

24 A They did, but I don't know, I just didn't have -- I  
25 didn't get it, if I remember, and it was too late, and

1 it didn't help us out on our hospital.

2 Q Now, Mr. Willis, before you filled out these three  
3 exhibits, the W-4's in question in this trial, --

4 A Yes.

5 Q -- did you seek any help or any advice, or did you rely  
6 just on the W-4 form and the instructions?

7 A I just relied on the W-4 form.

8 Q So that it is fair to say that what was in your mind  
9 is on this form as to what belonged on this form, is  
10 that correct?

11 A Yes.

12 Q You did not have an attorney prepare your 1971 return,  
13 is that correct?

14 A What?

15 Q An attorney prepare your 1971 return?

16 A No, I didn't have an attorney. An attorney?

17 Q Yes, sir.

18 A No.

19 Q I am going to hand you Government's Exhibit 12, and I  
20 ask you to take a look at it for a moment, specifically  
21 the bottom of the page, the bottom of the first page.

22 A Oh, pardon me; yes, I mean, yes, he did make out my  
23 income.

24 Q He did make out your income tax?

25 A Yes.



1 Q But you didn't consult with him about your W-4's?

2 A No.

3 Q That you filed two months later?

4 A What is that?

5 Q That you filed two months later?

6 A That I filed a few months later?

7 Q Yes, the next W-4 was filed in March, and did you  
8 have your attorney?

9 A That was after that, yes. I got it, must be, from  
10 the Government, that W-4.

11 Q I see.

12 A I am a little hard of hearing.

13 MR. WELCH: I have no further questions,  
14 your Honor.

15 THE COURT: Any redirect?

16 MR. MERRILL: Just one question.

17 REDIRECT EXAMINATION

18 BY MR. MERRILL:

19 Q Mr. Willis, was it your understanding that the W-4 --  
20 that you made your claim for an itemized deduction on  
21 a W-4 form and it required you to actually spend that  
22 money sometime during that year?

23 A No.

24 MR. MERRILL: I have nothing else.

25 THE COURT: You are excused.

1 THE WITNESS: Thank you.

2 (Whereupon the witness was excused.)

3 MR. MERRILL: May I have a moment,  
4 your Honor? May I confer with some potential  
5 witnesses outside of the courtroom?

6 THE COURT: A short recess.

7 (After a short recess, the proceedings  
8 were resumed.)

9 MR. MERRILL: Your Honor, at this time  
10 the defense rests.

11 THE COURT: All right. It is late  
12 in the afternoon and we have some legal matters to  
13 attend to, so I will let the jury go until tomorrow  
14 morning. Do not talk about the case, and do not  
15 let anybody talk about it with you.

16 (Whereupon, the jury was excused.)

17 MR. MERRILL: Your Honor, now I would  
18 like to renew my motion for the Court to direct the  
19 judgment of acquittal for the defendant, please.

20 THE COURT: I will hear you.

21 MR. WELCH: It is the Government's  
22 position that we have proved the guilt beyond a  
23 reasonable doubt, or at least for the jury to conclude  
24 that it is beyond a reasonable doubt. It is solely a  
25 jury question of whether or not to believe Mr. Willis,



1 as to whether or not he understood what he was doing.

2 THE COURT: But what did that form say?  
3 Did I hear it correctly when it was read, that for  
4 every additional \$750 worth of income you can take  
5 an additional allowance, and is that what the form says?

6 MR. WELCH: Not exactly.

7 THE COURT: May I see it?

8 MR. WELCH: Close to that, your Honor.  
9 It has to be a determinable allowance, and it is \$750  
10 in excess of your standard deductions.

11 THE COURT: Where is the form 1040  
12 instructions?

13 MR. WELCH: Here, your Honor (offering)

14 THE COURT: I have read enough to  
15 reserve decision on it. I will reserve my decision.

16 MR. WELCH: Thank you, your Honor.

17 THE COURT: Do you rest, or do you have  
18 some more?

19 MR. WELCH: I have no intention of  
20 putting in any rebuttal.

21 THE COURT: We will sum up in the  
22 morning, and I will charge the jury.

23 I will give you my rulings in the  
24 morning on the request to charge. I have to do some  
25 studying in light of the gobbledy-gook on these forms.

1 Court stands in recess until  
2 9:30 tomorrow morning.

3 (Whereupon the Court stood in recess  
4 until 9:30 a.m. on the following morning.)  
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1 And what is the effect of that? What  
2 is the effect of that? Take a look at the summary  
3 sheet, and beginning on the week ending the 19th of  
4 May, no withholding, no withholding, no withholding  
5 for the rest of 1973. He did it.

6 An honest mistake, or a calculated  
7 plan to frustrate the withholding? That is the simple  
8 question for you to decide.

9 Take a look at this summary sheet, and  
10 it is important, and compare it to these things, and  
11 think about what he said every time he went in there  
12 to file these things. "I want my money back."

13 "I am sorry, we can't give you your  
14 money back," and then a new W-4 withholding form.  
15 Did he know that they were false and fraudulent?  
16 It is a very simple question.

17 So when I ask you to return a just  
18 verdict; there is only one just verdict, and that is  
19 a guilty verdict.

20 Thank you all for listening to me.

21 THE COURT: It now becomes my function  
22 to instruct you on the law, which must govern your  
23 decision in this case, on the facts, as you find them.

24 Now, I am the exclusive judge of the  
25 law, and just as I am the exclusive judge of the law,

1 you are the exclusive judge of the fact. You, the jury,  
2 decide what weight, what effect, and what value you  
3 will give to the evidence. You decide whether or not  
4 to believe a witness and, of course, you ultimately  
5 decide the guilt or non-guilt of this defendant.

6 Now, you are not to conclude from my  
7 rulings that I have made throughout this trial, or  
8 any questions that I may have asked, that I have any  
9 opinion one way or the other as to the guilt or  
10 innocence of this defendant. That decision, as I said,  
11 is exclusively up to you.

12 Now, how do you go about finding the  
13 facts? First, you should consider the exhibits which  
14 have been received in evidence, and then you should  
15 consider the testimony of all of the witnesses. Sift  
16 out what you believe, weigh it in the scale of your  
17 reasoning powers, and draw such conclusions as your  
18 conscience tells you the evidence supports and justifies,  
19 and decide.

20 Now, in this connection, it is your  
21 memory of the evidence that controls. It is not the  
22 way I remember it; not the way Counsel remembered it.  
23 If your memory squares with what the lawyers just  
24 told you as their version of the evidence, you may  
25 accept what they said. But to the extent that you have



1 a different recollection, you are bound to rely on  
2 your own collective memory.

3 Now, sometimes juries are only out  
4 there a few minutes and they want the entire testimony  
5 of a witness, and they haven't really discussed the  
6 case or tried to refresh their memory at all. Now,  
7 after, if you can't remember the evidence, perhaps one  
8 of your fellow jurors can remember it, and by discussing  
9 it, you will refresh your recollection.

10 But if in the end you want any part  
11 of the testimony re-read to you, I will have the  
12 court reporter read it, if you can specify what you  
13 want, and bear in mind that this is a short trial.  
14 The issue here, as I expected, when I told you when  
15 you were selected here, is a relatively simple one,  
16 and it is simply whether this was an honest mistake  
17 by the defendant.

18 First of all, was it a mistake, and if  
19 so, was it an honest one, or was it a deliberate fraud?  
20 That is the question. That is the question.

21 As we wander through these regulations,  
22 and Internal Revenue laws, that is the ball to keep  
23 your eye on. Was it an honest mistake, or deliberate  
24 fraud? That is the question.

25 One of your most important functions is

1 to determine which witnesses you are going to believe,  
2 and this is so as to every witness, whether called  
3 by the government or by the defendant. You are not  
4 to be influenced by the number of witnesses called.  
5 You are concerned not with the quantity of the evidence,  
6 but with the quality of the evidence.

7 The first test which you should apply  
8 in determining whether to believe a witness is to  
9 measure what he says in the scale of your common  
10 sense and your reasoning powers. You are not bound  
11 to believe unreasonable statements or to accept  
12 testimony that defies your experience and common sense,  
13 or which insults your intelligence just because the  
14 statements are made under oath on the witness stand  
15 in a public courtroom.

16 In deciding whether to believe a  
17 witness you should consider not only what he said,  
18 but how he acted and his manner on the stand. How  
19 did the witness impress you? You were watching every  
20 witness here very carefully, as they were testifying.  
21 Obviously, you were sizing them up. How did the  
22 witness impress you? Was he being frank with you  
23 or was he trying to sell you a bill of goods here?  
24 Was his version of the evidence plausible and straight-  
25 forward or was he just parroting answers and trying



1 to convince you of something that is totally  
2 unbelievable?

3 Does the witness have any motive to  
4 testify falsely? Is the witness interested in the  
5 outcome of this case? How strong or weak was his  
6 memory on important events? What is the level of his  
7 intelligence?

8 In short, can you rely on him; can  
9 you trust him?

10 You ought to consider his opportunity  
11 to know the facts about which he testified, and the  
12 probability or improbability of what he said. How  
13 does this testimony add up when considered with all  
14 of the other evidence, particularly when considered  
15 with the documentary evidence? It can't change the  
16 documents. Are there any inconsistencies in the  
17 witness' testimony, and if so, how important are they?  
18 Has he made any inconsistent statements on an earlier  
19 occasion, and if so, what were the facts?

20 Now, the defendant, Austin P. Willis,  
21 took the stand here and testified as a witness. He  
22 was not required by law to do so, and his appearance  
23 as a witness was entirely voluntary on his part.  
24 If he had not testified, his failure to take the  
25 stand could not have been considered by you in any

1 manner in determining his guilt or innocence, but  
2 having chosen to testify, the law requires that you  
3 judge and appraise his testimony by the same standard  
4 which you apply to the testimony of other witnesses,  
5 giving consideration, of course, to his background,  
6 to the level of his education, and to his type of  
7 employment, to his experience, to his personality,  
8 and to his natural interest in the outcome of this  
9 trial.

10 Now, if you find that any witness has  
11 deliberately and wilfully lied with respect to any  
12 material fact in his or her testimony offered at this  
13 trial, you may, if you wish, accept as much of the  
14 testimony as you believe, or if you wish, you can  
15 reject his or her entire testimony.

16 I want to remind you before discussing  
17 the crimes charged here, that an information is a  
18 mere accusation. It is not evidence of the truth of  
19 the charges made, and you are to draw no inference of  
20 guilt from the mere fact that an information has been  
21 filed against this defendant. An information means  
22 simply that the defendant has been accused of a crime,  
23 and that the defendant here has denied the charges  
24 made against him by his plea of not guilty, and by  
25 his testimony on the witness stand.



1           The defendant has no burden of proof to  
2 sustain in this case. He is under obligation to produce  
3 no evidence, or to produce any witnesses. He is  
4 presumed to be innocent, and this presumption of  
5 innocence continues throughout the trial, and during  
6 the deliberations of the jury. This presumption of  
7 innocence is overcome when, and only when, the government  
8 establishes the guilt of the defendant beyond a  
9 reasonable doubt.

10           Now, what do I mean by beyond a  
11 reasonable doubt? A reasonable doubt is a doubt that  
12 is based upon reason, a reason which appears in the  
13 evidence, or in the lack of evidence. It is not  
14 some vague, speculative, imaginary doubt, nor doubt  
15 based upon emotion, sympathy, or prejudice, or upon  
16 what some jury might regard as an unpleasant duty.  
17 The government is not required to prove the defendant's  
18 guilt beyond every possible doubt, nor to an absolute  
19 or mathematical certainty because such measure of proof  
20 is usually impossible in human affairs, and that is  
21 particularly so in a case like this, which in the last  
22 analysis turns to the defendant's state of mind.

23           You should review all of the evidence  
24 as you remember it. Sift out what you believe, and  
25 discuss it, and analyze it, and weigh and compare your

1 view of the evidence with your fellow jurors.

2 If that process produces a solemn belief or conviction  
3 in your mind of the sort that you would be willing  
4 to act upon, without hesitation if this were a  
5 matter of importance to yourself, then you may say  
6 that you have been convinced beyond a reasonable  
7 doubt.

8 On the other hand, if your mind is  
9 wavering, or some uncertainty that you would hesitate  
10 before acting, if this were an important matter to  
11 yourself, then you have not been convinced beyond  
12 a reasonable doubt, and you must render a verdict  
13 of not guilty.

14 Now, the information in this case  
15 contains three counts, and I will send a copy of it  
16 in to you for your guidance. But each of those counts  
17 charges a separate crime, and each count must be  
18 considered by you separately.

19 The defendant, Austin P. Willis, is  
20 charged in each count with unlawfully, wilfully and  
21 knowingly furnishing his employer, General Laboratory  
22 Associates, Inc., with a signed withholding exemption  
23 certificate containing a false and fraudulent statement.

24 Now, Count 1 charges that on or  
25 about March 19, 1972, the defendant furnished his



1 employer with a withholding certificate claiming  
2 10 withholding exemptions and allowances when, in  
3 fact, as he well knew, he was entitled to only 8.

4 Count 2 charges that on or about  
5 June 19, 1972, the defendant furnished his employer  
6 with a withholding certificate claiming 15 withholding  
7 exemptions and allowances when, in fact, as he knew,  
8 he was entitled to only 8.

9 Count 3 charges that on or about May 18,  
10 1973, the defendant furnished his employer with a  
11 withholding certificate claiming 21 withholding  
12 allowances when, in fact, as he knew, he was entitled  
13 to only 8.

14 Now, all three of these counts charge  
15 violations of Federal laws which provide any  
16 individual required to supply withholding exemption  
17 certificates to his employer, who wilfully supplies  
18 false or fraudulent information shall be guilty of  
19 a crime.

20 Another law related to this provides  
21 in pertinent part that on or before the date of the  
22 commencement of employment with an employer, the  
23 employee shall furnish the employer with a signed  
24 withholding exemption certificate relating to the  
25 number of withholding exemptions which he claims

1 which shall in no event exceed the number to which  
2 he is entitled.

3 If, on any day during the calendar  
4 year, the number of withholding exemptions to which  
5 the employee is entitled is greater than the number  
6 of withholding exemptions claimed, the employee may  
7 furnish the employer with a new exemption certificate  
8 relating to the number of withholding exemptions  
9 which the employee then claims which shall, in no  
10 event, exceed the number to which he is entitled  
11 on such day.

12 Now, in order to convict the defendant  
13 on the count which you are considering, the government  
14 must prove to your satisfaction, beyond a reasonable  
15 doubt, the following four elements of crime:

16 1. That the defendant was required  
17 to furnish his employer with a signed withholding  
18 exemption certificate stating the number of withholding  
19 exemptions claimed by him.

20 2. That the defendant furnished his  
21 employer with a signed withholding exemption certificate  
22 stating the number of withholding exemptions claimed  
23 by him.

24 Now, as to these first two elements,  
25 there is no dispute here in the evidence that the



1 defendant was required by law, and I instruct you  
2 that he was required by law to file a withholding  
3 exemption certificate with his employer upon the  
4 commencement of his employment. There is no dispute  
5 that he did so.

6 Likewise, there is no question in  
7 the evidence that the defendant later filed new  
8 withholding exemption certificates, reflecting  
9 changes in the number of exemptions, or withholding  
10 allowances, which he claims.

11 So as to the first two elements, there  
12 is no question.

13 The third element is that the  
14 withholding exemption certificates contain information  
15 which the defendant knew to be false or fraudulent,  
16 and this gets to the crux of this case.

17 Now, as to this third element that  
18 the defendant knew that the certificate contained  
19 false or fraudulent information, the law provides  
20 that an employee in the married status of this  
21 defendant is entitled to take an exemption for himself,  
22 an exemption for his wife, and an additional exemption  
23 if his wife is not employed, and he may also take  
24 an exemption for each of his dependents.

25 The law also permits an employee to

1 claim additional withholding allowances, based upon  
2 the amount of itemized deductions which he reasonably  
3 anticipates he will declare on his next income tax  
4 return.

5 An employee is thus entitled to claim  
6 one additional withholding allowance for each \$750  
7 or fraction thereof of itemized deductions which  
8 he reasonably expects to declare on his next income  
9 tax return, above a set figure stated in a table  
10 which is printed on the back of Form W-4, and a copy  
11 of that table is set forth on the back of Government's  
12 Exhibit 5.

13 The term "estimated itemized deductions"  
14 means the aggregate amount which he reasonably expects  
15 to be allowable as deductions for the estimation year.  
16 In no case shall such an aggregate amount be greater  
17 than the sum of: One, the amount of such deductions,  
18 or the amount of standard deductions reflected in his  
19 return of tax for the taxable year preceding the  
20 estimation year; and, two, the amount of his determinable  
21 additional deductions for the estimation year.

22 The determinable additional deductions  
23 means those estimated itemized deductions which are  
24 demonstrably attributable to an identifiable event  
25 during the estimation year, or the preceding taxable



1 year, which can reasonably be expected to cause an  
2 increase in the amount of such deductions on the  
3 return of tax for the estimation year.

4 Now, the government contends here on  
5 this element of the defendant's knowledge, and on  
6 the element of whether there were false statements  
7 made in these withholding returns, that each of  
8 the withholding certificates furnished by the  
9 defendant in the prosecution period here, contained  
10 false information, and that the defendant knew in  
11 that the defendant knowingly and deliberately over-  
12 stated his estimated itemized deductions, and thereby  
13 falsely inflated the number of withholding allowances  
14 which he was entitled to claim.

15 I think Mr. Welch phrased it aptly  
16 when he said that it was a matter that the government's  
17 contention of stupid ignorance, of calculated fraud.

18 The defendant, on the other hand,  
19 contends, as his lawyer, Mr. Merrill, aptly phrased it,  
20 that he made an honest and understandable mistake;  
21 that he honestly estimated his deductions based on  
22 expected increases in his wages, and deductions for  
23 medical expense which he expected to have to pay  
24 because of his wife's illness, and therefore, that  
25 the certificates contained no false information, or

1 if they did, he did not know it, and in any event,  
2 he could not know it until the future events took  
3 place, or failed to take place, because he was making  
4 an estimate, an honest estimate, he says.

5 Now, the fourth element is that the  
6 defendant acted wilfully and intentionally. You will  
7 note that in describing these elements here I have  
8 said that the defendant must have acted knowingly,  
9 that is, that he knew that the certificate contained  
10 false or fraudulent information. Now, an act is done  
11 knowingly, if it is done voluntarily and purposely,  
12 and not because of a mistake, accident, neglect,  
13 ignorance, carelessness, confusion or any other  
14 innocent reason.

15 In determining whether this defendant  
16 acted knowingly and intentionally, it requires you  
17 to decide what was going on in this man's mind at  
18 the time that he furnished and filled out these W-4  
19 forms.

20 Now, it is obviously impossible to  
21 look into a man's mind. We do not have some kind  
22 of an x-ray that can tell us what is going on there.  
23 So we have to infer knowledge and intent from  
24 circumstantial evidence. You can infer it from the  
25 way a defendant acts, from his conduct, and from the



1 background, from all of the surrounding circumstances.

2 In short, here, actions speak louder  
3 than words when we are trying to decide what was  
4 going on in a man's mind.

5 You will notice, also, that in  
6 describing these elements I have said that the  
7 defendant must have acted wilfully. You will note  
8 that the information uses the word "unlawful, wilfully  
9 and knowingly." This means that the defendant must  
10 have known what he was doing, that he consciously  
11 did the prohibited acts, and that he intended to  
12 commit those acts. An act is done knowingly if it  
13 is done voluntarily, and purposely, and again, not  
14 because of a mistake, negligence, or other innocent  
15 reasons. An act is wilful if it is done knowingly  
16 and deliberately, and with an evil motive or purpose.  
17 Unlawful means that the act must be something  
18 prohibited by law.

19 In essence, the phrase, "knowingly,  
20 wilfully and unlawfully," means a voluntary and a  
21 deliberate act.

22 Now, here the question is: Did this  
23 man deliberately make a false statement? In other  
24 words, did he believe in his own mind that what he  
25 was putting down here was not true, that it was false,

1           that he was not entitled to take these additional  
2           allowances? Was that what was in the man's mind?  
3           If he did, then he was deliberately making a false  
4           statement.

5                       On the other hand, if in his own mind  
6           he believed that what he was stating was true, that  
7           he was entitled to that, or if he was honestly  
8           confused or misled, or misguided by the form, then  
9           he did not make a false statement, and then he did  
10          not act wilfully, and you should acquit him.

11                      Now, in determining whether the  
12          defendant acted knowingly and intentionally, you  
13          must consider all of the circumstances. You should  
14          consider such evidence as you recall and believe,  
15          as to whether the defendant honestly believed that  
16          his income and itemized deductions would increase  
17          enough during the periods in question to permit him  
18          to claim the additional withholding allowances and  
19          any other circumstances shown in the evidence which  
20          helped you in deciding whether this man made an  
21          honest mistake, in which event you must acquit him,  
22          or whether he made a deliberately false statement  
23          with a conscious and guilty knowledge.

24                      Now, the government contends that  
25          the defendant knew that he was falsely overstating his



1 estimated deductions, and that he did so with the  
2 intention of increasing the number of his withholding  
3 allowances in order wrongfully to avoid having taxes  
4 withheld from his wages.

5 The defendant, on the other hand,  
6 contends that he did not overstate his estimated  
7 deductions and that he made an honest estimate, and  
8 as he understood it in accordance with the instructions  
9 on the W-4 form, and as he honestly interpreted and  
10 understood them, and in anticipation of future events,  
11 which he believed seemed reasonably foreseeable and  
12 that, if there were any error on any of the W-4 forms  
13 filed by him, it was due to an innocent mistake induced  
14 by his unfamiliarity with complex and confusing  
15 instructions.

16 You should consider all of the evidence  
17 and each count separately. But if as to a count that  
18 you are considering you find that the government  
19 has failed to prove to your satisfaction, beyond a  
20 reasonable doubt, all four elements of the crime,  
21 as I have defined them to you, then you must acquit  
22 the defendant on that charge.

23 On the other hand, if, as to the count  
24 which you are considering, you find that the government  
25 has proved to your satisfaction beyond a reasonable

1       doubt each of the four elements as I have defined them,  
2       then you should convict the defendant on that count.  
3       You are instructed that the question of possible  
4       punishment of the defendant in the event of a conviction  
5       is no concern of yours, and it should not, in any  
6       sense, enter into or influence your deliberations.  
7       The duty of imposing sentence in the event of a  
8       conviction rests exclusively upon the Court. The  
9       function of the jury is to weigh the evidence in the  
10      case, and decide the guilt or innocence of the  
11      defendant on the basis of that evidence.

12               Now, when you retire to the jury room,  
13      you will elect one of your number to act as your  
14      Foreman, or Forelady. During your deliberations,  
15      treat one another with consideration and respect,  
16      as I know you will. If differences of opinion arise,  
17      your deliberations should be dignified, calm, and  
18      intelligent, and your verdict must be based on the  
19      evidence and the law. The evidence which was presented  
20      in this case, as you remember it, and the law as I have  
21      given it to you in these instructions.

22               You are each entitled to your own  
23      opinion. No juror should acquiesce in a version  
24      against his individual judgment. Nevertheless, I  
25      would point out that no one should enter a jury room



1 with such pride of opinion that he refuses to change  
2 his mind no matter how convincing the argument of  
3 a fellow juror or jurors. Talk out your differences.  
4 That is the very essence of our democratic jury  
5 process.

6 Each of you should, in effect, decide  
7 the case for himself or herself, after thoroughly  
8 reviewing the evidence, and discussing it with your  
9 fellow jurors, with an open mind, and with a desire  
10 to reach a verdict. If you do that, you will be  
11 acting in the true democratic jury process.

12 The alternate will be excused with the  
13 thanks of the Court, before the jury retires for  
14 your deliberations.

15 Any verdict must be the unanimous  
16 verdict of all twelve of the jurors, and it must  
17 represent the honest conclusion of each of you.

18 I submit the case to you with the  
19 confidence that you will fully measure up to the oath  
20 that you took as members of the jury to decide the  
21 issues submitted to you fairly, impartially, without  
22 favor or fear.

23 Now, members of the jury, if you find  
24 that the government has failed to establish the guilt  
25 of this defendant beyond a reasonable doubt, you should

1           acquit him.

2                       If you find that this defendant has  
3 not deliberately made a false statement on his  
4 withholding statements, that he did make an honest  
5 mistake, you should not hesitate, for any reason,  
6 to render a verdict of not guilty.

7                       On the other hand, if you find that  
8 the government has established the guilt of this  
9 defendant beyond a reasonable doubt, that he did  
10 deliberately and purposely make a false statement,  
11 and that he was not the victim of an honest mistake  
12 or carelessness or ignorance, you should not hesitate,  
13 because of sympathy or any other reason, to render  
14 a verdict of guilty.

15                      Your Foreman or Forelady will return  
16 an oral verdict in open court on each count of  
17 guilty or not guilty.

18                      Are there any exceptions, gentlemen,  
19 and if so, I will hear you at this time.

20                      MR. WELCH: No.

21                      MR. MERRILL: No.

22                      THE CLERK: The Marshals, please step  
23 forward.

24                      (The Marshals were sworn by the Clerk.)

25                      THE CLERK: The alternate juror is  
excused from further consideration of this case.



1 (Whereupon the alternate juror was  
2 excused from the case, and the jury retired to the  
3 jury room.)

4 THE CLERK: Court stands in recess.  
5  
6  
7

8 (Whereupon the jury returned to the  
9 courtroom at 1:38 p.m.)

10 THE CLERK: Ladies and gentlemen of the  
11 jury, have you agreed to a verdict, and if so, how  
12 do you find, and who shall speak for you?

13 THE FOREMAN: Yes, we have a verdict.

14 On Count 1, not guilty; on Count 2,  
15 not guilty; on Count 3, guilty.

16 THE CLERK: Hearken to your verdict,  
17 ladies and gentlemen of the jury, as the Court has  
18 recorded it, and say you all you find the defendant,  
19 Austin P. Willis, not guilty on Count 1, not guilty  
20 on Count 2, and guilty on Count 3, and so say you all?

21 (The jurors answered in the affirmative.)

22 THE COURT: Ladies and gentlemen, I  
23 thank you for reaching your decision, and you are  
24 excused now for the balance of the term. I would  
25 like to also thank you for your service during the

1 month and tell you how much I have enjoyed working  
2 with you. We have accomplished much more than would  
3 appear.

4 Thank you very much, and you are  
5 excused.

6 (Whereupon, the jury was excused.)

7 THE COURT: Anything else, gentlemen?

8 MR. MERRILL: Could we go off the  
9 record?

10 THE COURT: Yes.

11 (Discussion off the record.)

12 MR. MERRILL: Your Honor, I would like  
13 to renew my motion for a judgment of acquittal, upon  
14 the grounds, as we stated earlier, and upon further  
15 grounds, that the form itself is extremely misleading,  
16 and I am not speaking on a general basis, but as far  
17 as that defendant is concerned, and the form as it  
18 relates to the statute is misleading as to the  
19 requirement of the law, and a judgment of acquittal  
20 should be entered in that regard.

21 MR. WELCH: If your Honor please, we  
22 submit that the case went to the jury on the basis  
23 of whether or not Mr. Willis was misled by that form.  
24 Your Honor instructed them about the law as it  
25 applies, and there was no objection to that instruction.



1 The jury had the evidence in front of them, and both  
2 Mr. Willis' explanation of what he thought that  
3 instruction meant, and they had the instruction on  
4 the forms themselves, and determined that question  
5 against Mr. Willis.

6 It was a jury question, and we submit  
7 that the jury verdict should stand. It was based  
8 on substantial circumstantial evidence.

9 THE COURT: The Court has grave  
10 misgivings about whether these forms and the  
11 regulations behind them lend themselves to enforcement  
12 through the criminal processes.

13 Nonetheless, the District Court must  
14 exercise great restraint before declaring the statutes  
15 and regulations implementing them void for vagueness  
16 or indefiniteness. This jury was given these forms  
17 during the trial, and while ordinarily I would not  
18 delay for each member of the jury to read forms of  
19 this type, all of the exhibits were carefully read  
20 by every juror, and we all sat here silently while  
21 the jury did it.

22 There was a motive in my doing that,  
23 rather than letting Counsel sum up on them, and  
24 arguing what you think the forms showed or did not  
25 show, and that was that to let the jury have a good





1 opportunity to see whether they were confused by this.  
2 Apparently they were not, as to Count 3.

3 The issue was clearly put to the jury,  
4 on a Charge, which both sides found unexceptionable.

5 On both summations, I think that it  
6 was made perfectly clear to the jury what the issue  
7 was. The Court made clear at the very outset, and  
8 during the Charge, that the issue was whether the  
9 defendant made an honest mistake, or whether he  
10 deliberately made false statements on his returns.

11 The jury found against him, and I  
12 think in light of all of the evidence that that finding  
13 was certainly one which a jury could reach. Reasonable  
14 men might reach different conclusions about it, but  
15 there was sufficient evidence for the jury to find  
16 the defendant guilty beyond a reasonable doubt on  
17 Count 3.

18 Accordingly, I deny the motion, and  
19 set August 1 for sentencing.

20 MR. MERRILL: I request that Mr. Willis  
21 has been, during the past year pending this trial,  
22 he has been on his own recognizance, and I ask that  
23 he be continued.

24 MR. WELCH: No objection, your Honor.

25 THE COURT: All right, the defendant is

DEFENDANT

Austin P. Willis

Northern District of New York

DOCKET NO. ➤

74-CR-108

## JUDGMENT AND PROBATION/COMMITMENT ORDER

AO 245 (6/7)

In the presence of the attorney for the government  
the defendant appeared in person on this date

MONTH	DAY	YEAR
August	1,	1974

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired  
have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Jeffrey Merrill

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that  
there is a factual basis for the plea,☐ NOLO CONTENDERE, ☒ NOT GUILTY

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged☒ GUILTY.FINDING &  
JUDGMENT

Defendant has been convicted as charged of the offense(s) of on or about May 18, 1973, while a resident of Sherburne, in the Northern District of New York, who during the calendar year 1973 was employed by General Laboratory Associates, Inc., unlawfully, wilfully, and knowingly supplied a false and fraudulent statement to such employer on which he claimed 21 withholding allowances whereas, as he well knew, he was entitled to claim only 8 withholding allowances; in violation of T26, U.S.C. §§ 3402(f)(2) and 7205.



The court asked whether defendant had anything to say why judgment should not be pronounced. The defendant was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of **one**

year on Count 3. Execution of sentence is suspended, and the defendant is placed on probation for one year.

SENTENCE  
OR  
PROBATION  
ORDER

SPECIAL  
CONDITIONS  
OF  
PROBATION

ADDITIONAL  
CONDITIONS  
OF  
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and arrest the defendant for probation for a violation occurring during the probation period.

COMMITMENT  
RECOMMEN-  
DATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☒ U.S. District Judge

☐ U.S. Magistrate

► Lloyd F. Mac Mallon

Date

8-1-75

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

Docket Number 74-CR-108

v.

Honorable Lloyd R. McMahon  
(District Court Judge)

AUSTIN P. WILLIS

NOTICE OF APPEAL

Notice is hereby given that Austin P. Willis, Defendant appeals to the United States Court of Appeals for the Second Circuit from the ☒ Judgment ☐ order ☐ other (specify) of conviction entered in this action on August 1, 1975 (Date)

Date \_\_\_\_\_  
To: \_\_\_\_\_

Address

Jeffrey R. Merrill  
(Counsel for Appellant)  
O'HARA, O'HARA & VARS  
1020 Seventh North Street  
Liverpool, New York

Phone Number (315) 451-3810

ADD ADDITIONAL PAGE IF NECESSARY

(TO BE COMPLETED BY ATTORNEY)

TRANSCRIPT INFORMATION - FORM B

QUESTIONNAIRE

☒ I am ordering a transcript  
☐ I am not ordering a transcript  
Reason:  
☐ Daily copy is available  
☐ U.S. Attorney has placed order  
☐ Other. Attach explanation

TRANSCRIPT ORDER

Prepare transcript of  
☒ Pre-trial proceedings  
☒ Trial  
☐ Sentence  
☐ Post-trial proceedings

DESCRIPTION OF PROCEEDINGS  
FOR WHICH TRANSCRIPT IS  
REQUIRED (INCLUDE DATE).

The ATTORNEY certifies that he will make satisfactory arrangements with the court reporter for payment of the cost of the transcript. (FRAP 10(b)) Method of payment ☐ Funds ☒ CJA Form 21

ATTORNEY'S signature *Jeffrey R. Merrill*

DATE August 7<sup>th</sup> 1975

COURT REPORTER ACKNOWLEDGEMENT

To be completed by Court Reporter and forwarded to Court of Appeals.

Date order received

Estimated completion date

Estimated number  
of pages.

Date \_\_\_\_\_

Signature \_\_\_\_\_  
(Court Reporter)

ORIGINAL

26



STATE OF NEW YORK, COUNTY OF NEW YORK

ss.:

Daniel H. Murphy, II, being duly sworn, deposes and says: deponent is not a party to the action, is over 18 years of age and resides at 420 Monterey Avenue, Pelham Manor, New York 10803



Affidavit  
of Service  
By Mail

On January 19, 1976, deponent served the within Appellant's Appendix upon Hon. James M. Sullivan, Jr., USAtty., NDNY, attorney(s) for Appellee in this action, at Federal Building, Syracuse, New York 13201 the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a post-paid properly addressed wrapper, in — a post office — official depository under the exclusive care and custody of the United States Postal Service within the State of New York.



Affidavit  
of Personal  
Service

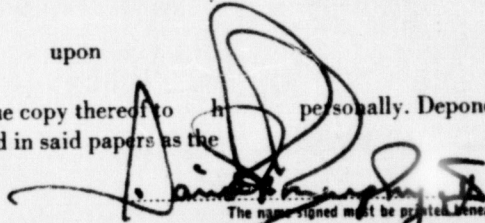
On 19 at upon

herein, by delivering a true copy thereof to h personally. Deponent knew the person so served to be the person mentioned and described in said papers as the therein.

Sworn to before me on January 20, 1976

*Patricia Dennigan*

PATRICIA DENNIGAN  
Notary Public, State of New York  
No. 24-4618654  
Qualified in Kings County  
Commission Expires March 30, 1977



The name signed must be printed beneath

Daniel H. Murphy, II